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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

NO. _____

JACK H. BROWN & CO. INC., Appellant,

v.

NORTHWEST SIGN COMPANY,
an Idaho Corporation, Appellee

ON APPEAL FROM THE SUPREME COURT OF TEXAS

JURISDICTIONAL STATEMENT

RESPECTFULLY SUBMITTED,

E. ELDRIDGE GOINS, JR.
STEVEN E. CLARK
GOINS, UNDERKOFLER, CRAWFORD
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COUNSEL FOR APPELLANT

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QUESTION PRESENTED

Appellant respectfully submits that the questions presented for determination by this Court are as follows:

1. Whether the Supreme Court of Texas' construction of Rule 28, Texas Rules of Civil Procedure, conflicts with federal principles of due process under the 14th Amendment to the United States Constitution;

2. Whether the Supreme Court of Texas erred by failing to hold that service on Appellant failed to provide it with the adequate and fair notice required by federal due process guaranteed under the 14th Amendment;

3. Whether the Supreme Court of Texas erred by holding that Appellee's foreign judgment was entitled to full faith and credit in Texas under Article

4, Section 1 of the United States Constitution;

4. Whether the decision of the Supreme Court of Texas conflicts with the decisions of other state courts of last resort and federal courts concerning the requirements of due process in perfecting service on a John Doe entity pursuant to state law;

5. Whether the Supreme Court of Texas erred by holding that the Court of Appeals' decision conflicted with a Texas Rule of Procedure that had no application to Appellee's suit against a fictitious entity that was being sued under an assumed name pursuant to Idaho law; and

6. Whether the Supreme Court of Texas erred by failing to hold that there were insufficient minimum contacts plead and proved by Appellee to obtain jurisdiction over Appellant.

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NO. _____

JACK H. BROWN & CO. INC., Appellant,

v.

NORTHWEST SIGN COMPANY,
an Idaho Corporation, Appellee

ON APPEAL FROM THE SUPREME COURT OF TEXAS

JURISDICTIONAL STATEMENT

Jack H. Brown & Co. Inc., d/b/a Signgraphics, appeals from the final judgment of the Supreme Court of the State of Texas, dated November 21, 1984, and from the Order overruling Appellant's Motion for Rehearing, entered on December

19, 1984. The final judgment of the Texas Supreme Court reversed the Court of Appeals and affirmed the judgment of the Trial Court that Appellee's suit to enforce a foreign judgment was entitled to full faith and credit because service of process on Appellant in the foreign action complied with the requirements of due process, thereby making the Writ of Garnishment filed by Appellee for satisfaction of the judgment proper.

OPINIONS BELOW

The opinion of the Supreme Court of Texas which appears in the appendix hereto, p. A-1, infra, is reported at 680 S.W.2d 808 (Tex. 1984).

The Dallas Court of Appeals' decision, which appears in the appendix hereto, p. A-9, infra, is reported at 677 S.W.2d 135 (Tex. App. 1984). A related opinion concerning the Appellee's Motion

to Dismiss Appellant's appeal in the Texas State Court, which appears in the appendix hereto, p. A-20, infra, is reported at 665 S.W.2d 219 (Tex. App. 1984, no writ).

The findings of fact and conclusions of law of the Trial Court (101st District Court of Dallas County, Texas) are not reported. They are reprinted in the appendix hereto, p. A-38, infra (Cause No. 82-3928-E), and p. A-40, infra (Cause No. 83-1043-E).

JURISDICTION

The judgment of the Supreme Court of the State of Texas, reversing the Court of Appeals decision that service on Appellant failed to meet the requirements of due process, rendering the foreign judgment void and not entitled to full faith and credit, was entered on November 21, 1984. Appendix, p. A-43, infra.

A Motion for Rehearing was entertained and denied on December 19, 1984. Appendix, p. A-45, infra.

A Notice of Appeal to this Court was duly filed in the Supreme Court of Texas on March 15, 1985, see appendix, p. A-46, infra, and in the Trial Court (possessed of the record) on March 15, 1985, see appendix, p. A-48, infra (Cause No. 83-1043-E) and p. A-50, infra (Cause No. 82-3928-E).

This appeal is being docketed in this Court within ninety (90) days from the denial of rehearing below. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(2). Should this Court determine that Appellant's appeal was improvidently taken under § 1257(2), then Appellant alternatively invokes the jurisdiction of this Court under 28 U.S.C. § 1257(3), and requests that the

Court treat Appellant's Jurisdictional Statement as a petition for certiorari, as is authorized by 28 U.S.C. § 2103.

CONSTITUTIONAL PROVISIONS AND RULES

Article IV, Section 1, United States Constitution:

> Full faith and credit shall be given in each state to the Public Acts, Records and Judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

14th Amendment, Section 1, United States Constitution:

> ***"Nor shall any state deprive any person of life, liberty, or property, without due process of law; ***"

Rule 28, Texas Rules of Civil Procedure:

> "Any partnership, unincorporated association, private corporation, or individual doing business under an assumed name may sue or be sued in its partnership, assumed or common name for the purpose of enforcing for or against a

substantive right, but on a motion by any party or on the Court's own motion the true name may be substituted."

* * * *

RAISING THE FEDERAL QUESTION

Appellant's appeal to this Court concerns consolidated actions involving the filing of a foreign judgment and a separate action to enforce a writ of garnishment. Appellant raised the issue of the adequacy of service in regard to the due process requirements of Amendment 14, Section 1 and the entitlement of the foreign judgment to full faith and credit under Article V, Section 1, at the earliest stage of the proceedings below, namely when Appellant's bank account was garnished by Appellee to enforce a foreign judgment against the named judgment debtor, Signgraphics, Inc., a separate and distinct corporation. The

constitutional issues were raised by Appellant in its Motion to Vacate Enforcement of Foreign Judgment filed in the Trial Court. Appendix, p. A-52, infra. Notwithstanding Appellant's objection that there had been no valid service upon it to support the foreign judgment against it, the Trial Court, in its findings of fact and conclusions of law in both the foreign judgment action (Cause No. 82-3928-E), and garnishment action (Cause No. 83-1043-E), found that Appellant had been properly sued in its assumed name, was properly before the Idaho court when the default judgment was rendered, thereby making the underlying judgment valid, enforceable and entitled to full faith and credit, which allowed Appellee's garnishment action against RepublicBank, N.A. to be proper and

maintainable. See appendix, p. A-38, and p. A-40, infra.

The constitutional claims of Appellant were reiterated in its appeals to the Dallas Court of Appeals. In both Appellant's direct appeal and petition for writ of error (which were consolidated on appeal, see appendix p. A-36 - 37, infra), Appellant argued that enforcement of the Idaho judgment against it would violate its constitutional right to due process since it was not properly made a party nor properly served with process at the time the default judgment was entered in Idaho. See excerpt from Appellant's briefs on appeal to the Dallas Court of Appeals, appendix p. A-76, infra. The Dallas Court of Appeals agreed with Appellant and reversed the judgment of the Trial Court enforcing the foreign judgment against Appellant and

dissolved the writ of garnishment. See opinion below, appendix p. A-9, infra. The Dallas Court of Appeals specifically relied on the decision of the Arizona Supreme Court in Safeway Stores, Inc. v. Ramirez, 99 Ariz. 372, 409 P.2d 292 (1965), which held that in jurisdictions allowing suits against John Doe Defendants, the party served must be put on notice that he is being served as a John Doe Defendant. See appendix, p. A-13 - 19, infra.

After Northwest filed a writ of error to the Texas Supreme Court, Appellant reiterated the constitutional deficiencies relating to service in its Response to Application for Writ of Error. See appendix, p. A-93, infra. Following the per curiam reversal of the Court of Appeals' decision, Appellant renewed the specific constitutional

issues which are presented to this Court in its Motion for Rehearing to the Texas Supreme Court and subsequent Motion for Stay of Mandate. See excerpts, appendix p. A-100 and p. A-115, infra. The Texas Supreme Court denied Appellant's Motion for Rehearing. See appendix, p. A-45, infra. It thus considered and expressly rejected Appellant's Federal constitutional claims.

STATEMENT OF THE CASE

Appellee, Northwest Sign Company ("Northwest"), initially filed a complaint in an Idaho state court in which the Defendants were designated in the caption as "Signgraphics, a foreign corporation, John Does I through X, d/b/a Signgraphics, a proprietorship or partnership, Defendants." See appendix, p. A-124, infra. Paragraph II of the Complaint stated:

> "John Does I through X are unknown partners or unknown proprietors doing the [sic] business under the name of Signgraphics. The John Doe Defendants are made Defendants herein by fictitious names. Plaintiff requests leave of Court to amend this complaint to insert their proper names at the times they are ascertained." [emphasis added].

The only named defendant was set forth in paragraph III of the Complaint as follows:

> "III.
>
> Signgraphics, Inc., is a foreign corporation with its principal place of business in Dallas, Texas."

Although the Complaint stated in paragraph IV that Defendants were subject to the jurisdiction of the state under the Idaho Long-Arm statute, Idaho Code § 5-514, the only pleaded contacts in the Complaint were set forth in paragraph V, in which it was alleged that Defendants opened a account with Plaintiff for the

purchase of services and materials and that Defendants have received materials and services from Plaintiff for which they had not paid.

There were no allegations set forth in the Complaint concerning the person or entity upon whom service of process could be made for either the named Defendant, Signgraphics, Inc., or the John Doe Defendants, alleged to be unknown proprietors or partners doing business under the name Signgraphics.

It is undisputed that only a single summons was issued and served upon Jack H. Brown, as registered agent, by Plaintiff. The summons repeats the caption of the Complaint but there is no language in either the summons or the return of service indicating that service was made upon Jack H. Brown as registered agent for one of the John Doe Defendants. See

appendix, p. A-130, infra. Moreover, the evidence is also undisputed that the summons was served personally on Jack H. Brown in his capacity as registered agent for Signgraphics, Inc. at his home at 9517 Fieldcrest Court, see appendix, p. A-133, infra. In fact, the name Jack H. Brown and the address 9517 Fieldcrest Court appeared twice on the summons. The evidence was also uncontradicted that this was the address for service of Mr. Brown as a registered agent for Signgraphics, Inc. while the address for service of Mr. Brown as a registered agent for Appellant was listed as the business address of Signgraphics (being 10011 Miller Road, Dallas, Texas). Although the return of service referred to service being made by the constable upon Mr. Brown as registered agent for Signgraphics, the evidence is clear that at

the time service was made upon Mr. Brown by the constable, he was being served as the registered agent for Signgraphics, Inc., and was never informed that he was either being served as the registered agent for Appellant or as the registered agent of an unknown party doing business under the assumed name Signgraphics pursuant to a John Doe designation. See appendix, p. A-141, 142, infra.

Following service, no appearance was made by any defendant in Idaho, and the record is clear that without any further amendment of its Complaint, Northwest obtained a default judgment. The only entity named in the judgment was Signgraphics; however, the judgment referred to both Signgraphics as a single defendant and to defendants in the plural. See appendix, p. A-139, infra. When Northwest's local counsel made his

initial foreign judgment filing, the only named judgment debtor was Signgraphics, Inc., the required notice of filing of foreign judgment was sent to Signgraphics, Inc. as judgment debtor (see appendix, p. A-142, infra), and the only application for writ of garnishment filed by Northwest local counsel sought to garnish an account belonging to Signgraphics Inc., the named judgment debtor. See appendix, p. A-143, infra. In reality, Northwest garnished the account of Appellant, a separate and distinct corporation. The bank answered the writ of garnishment denying that the account garnished belonged to the judgment debtor Signgraphics, Inc., but stated that such account belonged to Appellant.

Because of the garnishment of its company operating account, Appellant filed its sworn motion to dissolve writ

of garnishment in which Appellant stated that it was the owner of the garnished account, and was a separate and distinct corporation from the judgment debtor Signgraphics, Inc., and that its account had been wrongfully garnished by Northwest. A hearing in chambers on such motion was held by the Trial Court on March 17, 1983.

Due to the concerns expressed by the judge at such hearing, Northwest's counsel filed an amended filing of foreign judgment on March 25, 1983, which was properly authenticated as required by law.[1] By amended affidavit filed on the

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[1]The initial opinion of the Dallas Court of Appeals (which was not appealed by Northwest) held that the initial filing of foreign judgment was fatally defective due to the failure of Northwest's counsel to properly authenticate the filing as required by (Footnote Continued)

same date, Northwest asserted for the first time that the judgment debtor's were "Signgraphics, Inc.; John Does I through X, d/b/a Signgraphics a proprietorship or partnership". Thereafter, Northwest's Idaho counsel filed a motion to amend its complaint and judgment and an order was entered by a Idaho court on March 31, 1983 (a year and one half after the original judgment was entered) adding "John [sic] H. Brown & Company, d/b/a Signgraphics a Texas corporation, as Defendant in place of John Doe I" for both the Complaint and Judgment. See appendix, p. A-147, infra.

In response to the amended filing of foreign judgment, Appellant timely filed a Motion to Vacate Enforcement of Foreign

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(Footnote Continued)
the statute. See appendix, p. A-20, infra.

Judgment or Alternatively Motion for New Trial. A hearing on such Motion was held by the Trial Court on May 6, 1983 during which evidence in the form of testimony and exhibits were presented for the Court's consideration. Extensive arguments by both counsel were also made to the Court.

By Order dated June 16, 1983 (after the Motion had been overruled by operation of law), the Trial Court denied Appellant's Motion to Vacate or Alternatively for a New Trial. Subsequently, the Trial Court entered an Order on June 30, 1983 denying Appellant's Motion to Dissolve the Garnishment. In such order, the Trial Court found that the bank had funds in the account belonging to Signgraphics to satisfy the judgment, and ordered such funds garnished, assessed court costs in both actions

against Signgraphics, and awarded attorneys fees in favor of the Bank against Signgraphics.

Pursuant to timely request, the Trial Court filed its findings of fact and conclusions of law in both actions. See appendix, p. A-38 and p. A-40, infra. In these findings, the Court essentially held that Appellant had been properly served pursuant to Idaho law as a John Doe Defendant doing business under the name Signgraphics and therefore the garnishment of Appellant's account with the bank was proper to satisfy the foreign judgment.

Appellant timely perfected its appeal of the Trial Court's rulings, and the propriety of the enforcement of the foreign judgment (and underlying service upon Appellant) was extensively briefed and argued by the parties in oral

argument before the Dallas Court of Appeals. Thereafter, the Dallas Court of Appeals, in a published opinion (see appendix p. A-9, infra) held that the Trial Court had erred in enforcing the foreign judgment and garnishment proceeding against Appellant since the record affirmatively revealed that the Idaho court did not have personal jurisdiction over Appellant in that Appellant never received service of process. As previously noted, the Dallas Court of Appeals specifically relied upon the decision of the Arizona Supreme Court in Safeway Stores, Inc. v. Ramirez (see appendix, p. A-13 - 19, infra), in holding that the process served on Jack H. Brown did not show that he was being served as registered agent for service of process of a fictitious John Doe Defendant doing business as Signgraphics.

Northwest then duly perfected a writ of error to the Texas Supreme Court, appealing the Dallas Court of Appeals' decision reversing the Trial Court judgments. In its response in opposition to the writ of error, Appellant reiterated its belief that the Dallas Court of Appeals' decision correctly held that the record affirmatively failed to indicate that Appellant had been properly sued and served in a manner consistent with the constitutional requirements of Federal due process. See appendix, p. A-93, infra. Without hearing oral argument, the Texas Supreme Court, in a per curiam opinion, reversed the Dallas Court of Appeals decision and affirmed the judgment of the Trial Court enforcing the foreign judgment and allowing the garnishment of funds in satisfaction of the judgment. See opinion below,

appendix, p. A-1, infra. The Texas Supreme Court held that the record clearly showed that service was had upon Signgraphics and that the Dallas Court of Appeals holding that there was no valid service upon Appellant was not only an incorrect statement of the facts but also a contradiction of the plain meaning of Rule 28, Texas Rules of Civil Procedure. The Texas Supreme Court further held that:

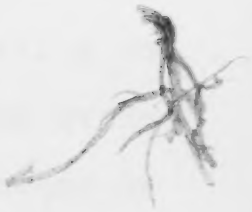
> "The record reflects that Jack H. Brown & Company had fair and adequate notice of the lawsuit since it was sued in its assumed name of Signgraphics and service of process was had on Jack H. Brown, registered agent for Jack H. Brown & Company and for Signgraphics, the assumed name of the company. The Court of Appeals erred in holding that there was no service of Jack H. Brown & Company, d/b/a Signgraphics.
>
> We conclude that the opinion of the Court of Appeals conflicts with TEX. R. CIV. P. 28." 680 S.W.2d at 809.

Thereafter, Appellant filed a timely Motion for Rehearing to the Texas Supreme Court setting forth in specific points of error the constitutional issues which it believed had been contravened by the Texas Supreme Court's decision. See appendix, p. A-100, infra. Nevertheless, the Texas Supreme Court denied Appellant's Motion for Rehearing on December 19, 1984, see appendix, p. A-45, infra. Appellant filed a Motion for Stay of Mandate, which was granted by the Texas Supreme Court pending Appellant's application to this Court for consideration of the Federal constitutional issues that have been raised by Appellant throughout these proceedings.

THE QUESTION IS SUBSTANTIAL

A. The Decision Below Conflicts With This Court's Cases Concerning Due Process:

The rights of a person to due process of law is one of the fundamental guarantees provided by the United States Constitution. This Court has repeatedly recognized that it is a violation of due process for a judgment to be held binding on a litigant who is not made a party or privy to the suit and therefore never had an opportunity to be heard. See Parklane Hosiery Co., Inc. v. Shore, 439 U.S. 322, 99 S.Ct., 645, 649, n. 7, 58th L.Ed. 2d 552 (1979); World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 290, 291 100 S.Ct. 559, 562, 62 L.Ed. 2d 490 (1980). In Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950), a case involving the adequacy



of notice by publication in a newspaper to individuals known by the trustee who caused the notice to be published, this Court, in sustaining the Appellant's constitutional objection that the statutory notice to known beneficiaries was inadequate, specifically stated at 339 U.S. 314:

> "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present objections. [cites omitted]. The notice must be of such nature as reasonably to convey required information, [cite omitted], and it must afford a reasonable time for those interested to make their appearance, [cite omitted]. ***
>
> But when notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to

> accomplish it. The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected... ."

B. This Court Has Not Addressed The Precise Issue Presented Here:

Although this Court has had many opportunities to review cases involving the adequacy of service of process in light of the requirements of constitutional due process, this Court has not previously had an opportunity to address the precise situation presented here; that is, what does due process require where service is being perfected against a John Doe Defendant being sued under an assumed name? This issue is of particular importance because approximately two-thirds of the states have statutory provisions which allow a plaintiff to sue an unknown defendant by a fictitious

name. See Note, Designation of Defendants by Fictitious Names - Use of John Doe Complaints, 46 Iowa L.Rev. 773, 776 n.15 (1961).

Specifically, this case involves the validity of a foreign judgment in which the party to whom the judgment is being enforced was identified only as a John Doe Defendant doing business under the name Signgraphics, but alleged to be an unknown proprietor or partner, and not a corporation. Furthermore, the evidence below indicates that the summons, which reflects service was to be made upon Jack H. Brown as a registered agent, was served upon Mr. Brown as registered agent at his home on Fieldcrest Court, which is the designated address for service upon Mr. Brown as a registered agent for Signgraphics, Inc., a separate and distinct corporation from Appellant. Only a

single summons was served upon Mr. Brown, and nowhere in either the summons or attached complaint was there any indication that Mr. Brown was specifically being served as the registered agent of an unknown corporation being sued as a designated John Doe Defendant doing business under the name Signgraphics.

C. The Texas Supreme Court Has Interpreted A State "Statute" Contrary to Principles of Due Process:

The holding of the Texas Supreme Court, and specifically its reliance on Rule 28, Texas Rules of Civil Procedure, which allows suits to be filed against parties in their assumed name, clearly conflicts with this Court's prior cases construing the adequacy of service of process under the requirements of the due process clause. Moreover, the application of Rule 28 to the present case

makes no sense since Texas law does not authorize a designation of a defendant by fictitious name. Suit was filed by Appellee in Idaho, which has a specific rule (unlike Texas) providing for suits against fictitious Defendants.

Rule 10(a)(4), Idaho Rules of Civil Procedure, provides the following:

> "Unknown party - when a party does not know the true name of the adverse party he may state that fact in the pleadings and designate such adverse party by any name and the words, "whose true name is unknown" and when his true name is discovered the pleading must be amended accordingly. [Emphasis added]

Reliance on Rule 28 by the Texas Supreme Court was unwarranted and irrelevant to the due process issue regarding the adequacy of notice of service upon Appellant, and by reversing the Court of Appeals, the Texas Supreme Court has

enforced a state statute contrary to constitutional principles of due process.

D. The Decision Below Conflicts With Decisions of Other State and Federal Courts:

A fundamental question of due process and jurisdiction is also presented by Northwest's attempt to insert Appellant as a named defendant in the underlying Idaho judgment for purposes of enforcement and collection after a default judgment was taken by Northwest, who clearly sought enforcement in Texas only against the originally named defendant in the Complaint, Signgraphics, Inc. The Supreme Court of Wisconsin addressed this precise question in construing its statutory provision authorizing suit against a defendant using a fictitious name, which contained language very similar to that found in Idaho Rules of Civil Procedure,

Rule 10(a)(4). See Miller v. Smith, 302 N.W.2d 468 (Wis. 1981). The Supreme Court of Wisconsin construed the permissive word "may" in its statute to be mandatory, requiring the making of an amendment inserting the defendant's true name either before or at the time of the entry of judgment, and further held that the default judgment taken against the John Doe Defendant in that case was void and unenforceable because the Court had failed to obtain personal jurisdiction over him. Under the rationale of the Supreme Court of Wisconsin's opinion in Miller v. Smith, Northwest was clearly required to amend its Complaint to insert Appellant as a named Defendant before default judgment was taken, and Northwest's failure to do so resulted in the default judgment being void and unenforceable with respect to Appellant. See

also Zenith Radio Corporation v. Hazeltine Research, Inc., 395 U.S. 100, 110, 89 S.Ct. 1562, 1569, 23 L.Ed. 2d 129 (1969) ("It is elementary that one is not bound by a judgment in personam resulting from litigation in which he is not designated as a party or to which he has not been made a party service of process.")

In Jackson v. Hayakawa, 682 F.2d 1344, 1348-49 (9th Cir. 1982), the issue was raised whether Defendant Hayakawa who was originally sued only in his official capacity, was properly before the court by virtue of an amended complaint naming him in his individual capacity. In ruling that Defendant Hayakawa was only before the Court in his official capacity, the 9th Circuit clearly stated that service of process would have to be made upon him in his individual capacity

following amendment of the complaint in order for due process to be satisfied:

> "The Third Amended Complaint and the Fourth Amended Complaint state in their captions that individual defendants were sued on both their official and personal capacities. These papers, however, were filed long after service had been made. New service would be necessary in order to satisfy the due process requirement of notice if there was to be a change in the status of defendants. See Harkless v. Sweeny Independent School District of Sweeny, Texas, 554 F.2d 1353, 1360 (5th Cir.), cert. denied, 434 U.S. 966, 98 S.Ct. 507, 54 L.Ed.2d 452 (1977)."

Under Idaho law, and the aforementioned federal and state decisions, the Texas Supreme Court clearly erred when it upheld the validity of service upon Appellant, where the original service did not indicate that service was being made upon Appellant as a John Doe Defendant, and any attempt to amend the Complaint

and Judgment thereafter without obtaining new service was void and of no effect.

Assuming arguendo that Northwest, in fact, attempted to serve the John Doe Defendants doing business under the name Signgraphics, as well as the named Defendant Signgraphics, Inc., there is nothing in the record to demonstrate that fundamental due process was provided to Appellant and its agent for service at the time such agent was served with the summons at his home on Fieldcrest Court. Mr. Brown was neither informed by the constable that he was being served as the agent of a fictitious defendant nor could he determine from a review of either the Summons or the Complaint that service was being effected upon him in such a capacity.

As the Arizona Supreme Court held under facts very similar to the instant

case, where a person is served in a John Doe capacity, due process requires, at a minimum, that a person served be served in a manner to reasonably notify him that he is being served in such capacity, and failing that any default judgment against that person should be considered void. See Safeway Stores, Inc. v. Ramirez, 99 Ariz. 372, 409 P.2d 292, 298 (1965). See also Wood v. Worachek, 437 F.Supp. 107 (E.D. Wis. 1977), rev'd on other grounds, 618 F.2d 1225 (7th Cir. 1980). (Citing U.S. ex rel Lee v. People of the State of Illinois, 343 F.2d 120, 120-21 (7th Cir. 1965)); Section 474 of the California Code of Civil Procedure, quoted in Hogan, California's Unique John Doe Defendant Practice: A Fiction Stranger Than Truth, 30 Stanford L. Rev. 51, 57, n. 17 (1977). Cf. Breslin v. City and County of Philadephia, 92 F.R.D. 764 (E.D. Pa. 1982)

("Given the identification of the remaining defendants only as "John Doe," there is no method of serving the complaint in accord with due process, and no way that the action can otherwise proceed. [cite omitted].")

A contrary conclusion would result in requiring any person served with process to determine at his risk the various capacities in which service is being made, especially when there are multiple defendants and some are being sued under their assumed name pursuant to a John Doe procedure. This is particularly true where, as here, the John Doe Defendants are sued in a different capacity than the entity upon whom service was allegedly made. Due process should require, at a minimum, that the John Doe entity sued and the actual entity served be one and same.

The holding of the Texas Supreme Court that Appellant was properly sued in Idaho under its assumed name in accordance with Rule 28, Texas Rules of Civil Procedure, is contrary to the established principles of due process under decisions of this Court, other state courts and Federal courts. Moreover, the holding of the Texas Supreme Court fails to address the further critical question presented by the facts of this case: Namely whether due process requires that the person being served be informed at the time of service that he is being served in a John Doe capacity or as the designated agent of a John Doe Defendant doing business under an assumed name, particularly where the entity name and the company served are not the same.

Finally, the allegations set forth in Northwest's Complaint filed in Idaho

failed to set forth sufficient facts upon which to predicate any jurisdiction over either of the Defendants under the Idaho Long-arm Statute. The failure to plead the requisite jurisdictional facts to establish upon its minimum contacts with Idaho renders any in personam judgment against Appellant defective and void under principles of due process.

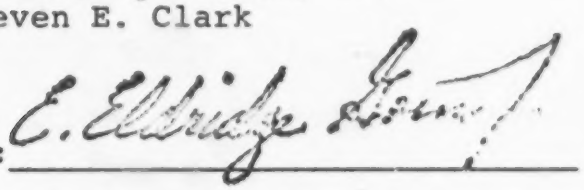
CONCLUSION

For all of the foregoing reasons, this Court should note probable jurisdiction of this appeal, or alternatively treat this as a petition for certiorari and grant same.

Respectfully submitted,

GOINS, UNDERKOFLER, CRAWFORD
& LANGDON
3300 Thanksgiving Tower
1601 Elm Street
Dallas, Texas 75201
214/969-5454

E. Eldridge Goins, Jr.
Steven E. Clark

By: 

Counsel for Appellant

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Jurisdictional Statement was forwarded by certified mail, return receipt requested to Mr. Bertran T. Bader, III, Cox & Bader, 211 North Ervay, Suite 1004, Dallas, Texas 75201, attorney for Appellee, Northwest Sign Company, and to Mr. Edward P. Perrin, Jr., Gardere & Wynne, 1500 Diamond Shamrock, Dallas, Texas 75201, attorney for RepublicBank Dallas, N.A. on this the _____ day of April, 1985.

E. Eldridge Goins, Jr.
Steven E. Clark

APPENDIX "A"

NORTHWEST SIGN COMPANY, an Idaho Corporation, Petitioner,

v.

JACK H. BROWN & COMPANY, INC., Respondent

NO. C-3491.

Supreme Court of Texas.

Nov. 21, 1984.

Rehearing Denied Dec. 19, 1984.

Appeal was taken from a judgment of the Dallas Court of Civil Appeals, Fifth Supreme Judicial District, 677 S.W.2d 135, reversing judgment of the District Court No. 101, Dallas County, Enoch, J., holding that suit to enforce foreign judgment was valid. The Supreme Court held that record reflected that corporation had fair and adequate notice of lawsuit since it was sued in its assumed

name and service of process was had on registered agent for corporation and for corporation's assumed name; therefore, service on corporation as defendant in foreign action was proper.

Reversed.

Corporations 507(11)

Record reflected that corporation had fair and adequate notice of lawsuit since it was sued in its assumed name and service of process was had on registered agent for corporation and for corporation's assumed name; therefore, service on corporation as defendant in foreign action was proper. Vernon's Ann. Texas Rules Civ. Proc., Rules 28, 483.

Bertran T. Bader, III, Dallas, for petitioner.

Goins & Underkofler, Steven E. Clark, for respondent.

PER CURIAM.

This is an appeal from the reversal of an action to enforce a foreign judgment and the dismissal of the writ of garnishment filed in the enforcement action. The trial court held that the suit to enforce the foreign judgment was valid because the service of process on the original defendant in the foreign action was proper. Consequently, the writ of garnishment filed for satisfaction of the judgment was proper. The court of appeals reversed the enforcement and dismissed the garnishment action. 677 S.W.2d 135 (1984). Pursuant to TEX.R.CIV.P. 483, we grant Northwest Sign Company's application for writ of error and, without hearing oral argument,

reverse the judgment of the court of appeals and affirm the judgment of the trial court enforcing the foreign judgment and allowing the garnishment of funds in satisfaction of the judgment.

There are two corporations involved here: (1) Signgraphics, Inc., whose registered agent for service of process is Jack H. Brown; and (2) Jack H. Brown & Company, which does business under the assumed name of Signgraphics, whose registered agent for service of process is also Jack H. Brown. In November, 1981, Northwest Sign Company, an Idaho Corporation, obtained a judgment in Idaho in an action styled "NORTHWEST SIGN COMPANY, an Idaho Corporation v. SIGNGRAPHICS, a foreign corporation; John Does I through X d/b/a SIGNGRAPHICS, a proprietorship or partnership." Service of process was executed upon

"Signgraphics, by delivering to its registered agent for service Jack H. Brown, on the 10th day of October, 1981 at 11:38 a.m." The record clearly shows that service was had upon Signgraphics. The judgment obtained as a result of this lawsuit was filed in Texas on April 14, 1982, in the suit to enforce the foregin judgment. On January 14, 1983, Northwest Sign Company garnished the account of Signgraphics, Inc., at the Republic National Bank of Dallas. Republic National Bank responded that they had an account styled Jack H. Brown & Company, d/b/a Signgraphics, but no account styled Signgraphics, Inc. As a result, the foreign judgment was amended on March 25, 1983, to add "Jack H. Brown & Co., d/b/a Signgraphics, a Texas corporation" in place of John Doe I for the suit to enforce and on the judgment itself.

Jack Brown & Company then moved to vacate the foreign judgment and to dissolve the writ of garnishment. The trial court properly overruled both motions. On appeal the court of appeals held that Jack H. Brown was the only entity served with process in the Idaho suit and that he was served as the registered agent for "Signgraphics, Inc." Therefore, the court held that since there was no valid service of Jack H. Brown & Company, d/b/a Signgraphics, the Idaho judgment and the Texas suit to enforce same must fail. This is not only an incorrect statement of the facts but also a contradiction of the plain meaning of TEX.R.CIV.P. 28.

The service of process in the Idaho suit showed on its face that Jack H. Brown was served as agent for Signgraphics. The Idaho complaint also named the defendants as "Signgraphics, Inc.,

...a foreign corporation" and "John Does I through X ...unknown partners or unknown proprietors doing business under the name of Signgraphics." Nowhere does "Signgraphics, Inc." appear on the judgment or on the complaint.

In addition, TEX.R.CIV.P. 28 provides that any partnership, unincorporated association, private corporation or individuals doing business under an assumed name may be sued in his assumed or common name. The record reflects that Jack H. Brown & Company had fair and adequate notice of the lawsuit since it was sued in its assumed name of Signgraphics and service of process was had on Jack H. Brown, the registered agent for Jack H. Brown & Company and for Signgraphics, the assumed name of the company. The court of appeals erred in holding that there was no service of

Jack H. Brown & Company, d/b/a Signgraphics.

We conclude that the opinion of the court of appeals conflicts with TEX.R.CIV.P. 28. Without hearing oral argument, we grant Northwest Sign Company's application for writ of error, reverse the judgment of the court of appeals, and affirm the judgment of the trial court enforcing the foreign judgment and the writ of garnishment. TEX.R.CIV.P. 483.

JACK H. BROWN & COMPANY,
Appellant,

v.

NORTHWEST SIGN COMPANY,
Appellee.

NO. 05-83-00887-CV.

Court of Appeals of Texas,
Dallas.

July 31, 1984.

Rehearing Denied Sept. 5, 1984.

Company appealed from the issuance by the 101st District Court, Dallas County, Craig T. Enoch, J., of a writ of garnishment obtained by judgment creditor against a company bank account, and from an order that full faith and credit be given to Idaho default judgment upon which the writ was based. The Court of Appeals, Allen, J., held that the Idaho court did not have personal jurisdiction over company since it never received service of process, even though its

authorized agent for service of process had been served in the suit as the registered agent for a separate corporation, and the company had done business under the assumed name of the separate corporation.

Order reversed and dismissed, writ vacated.

1. Judgment 818(1, 4)

Jurisdiction of foreign court to render default judgment must appear affirmatively on face of record and will not be presumed for judgment recitals.

2. Process 64

Actual notice of suit is insufficient if defendant was not properly served in manner prescribed by law.

3. Corporations 507(11)

Judgment 133

No service of process was had on company in Idaho suit, thus vitiating

default judgment entered against company, where its authorized agent for service of process was served in the suit only as the registered agent for a separate corporation, even assuming that under Idaho's "John Doe" procedure the company had been named as a defendant in the complaint as a John Doe doing business under the name of the separate corporation, since each defendant to the suit had to be served with process.

4. Process 64

Even in jurisdictions allowing "John Doe" defendants, party served must be put on notice that he is being served as a John Doe defendant.

5. Corporations 507(11)

Idaho default judgment was not a judgment against company, where record affirmatively showed that Idaho court did not have personal jurisdiction over the

company in that company never received service of process.

Steven E. Clark, Goins & Underkofler, Charles L. Perry, Johnson, Bromberg & Leeds, Dallas, for appellant.

Bertran T. Bader, Cox & Bader, Dallas, for appellee.

Before AKIN, ALLEN and GUILLOT, JJ.

ALLEN, Justice.

Jack H. Brown & Company appeals from the issuance of a writ of garnishment obtained by Northwest Sign Company, appellee, against Republic National Bank of Dallas on the account of Jack H. Brown & Company d/b/a Signgraphics, and from an order giving full faith and credit to an Idaho default judgment, styled Northwest Sign Company v. Signgraphics, No. A-2092, upon which the writ was based. Jack H. Brown & Company contends that it never received service of process in the original Idaho suit and, therefore, the Idaho judgment is not binding on Jack H. Brown & Company. We agree. Accordingly, we reverse the judgment of the trial court enforcing the judgment as to Jack H. Brown & Company and dissolve the writ of garnishment.

This court has previously published an opinion on this case denying Northwest Sign's motion to dismiss the appeal. 665 S.W.2d 219 (Tex.App. - Dallas 1984, no writ). The original Idaho complaint named as defendants "Signgraphics, Inc. ... a foreign corporation," and "John Does I through X ... unknown partners or unknown proprietors doing the [sic] business under the name of Signgraphics." Service of process was had on Jack H. Brown as registered agent for Signgraphics, Inc.

Signgraphics, Inc. and Jack H. Brown & Company are separate and distinct corporations. Jack H. Brown & Company does business under the assumed name Signgraphics. Jack H. Brown is the registered agent for service of process of both corporations, Signgraphics, Inc. and Jack H. Brown & Company.

[1, 2] Jurisdiction of a foreign court to render a default judgment must appear affirmatively on the face of the record and will not be presumed from judgment recitals. Bayne v. Heid, 638 S.W.2d 40, 41 (Tex. App. - Houston [1st Dist.] 1982, no writ); Country Clubs, Inc. v. Ward, 461 S.W.2d 651 (Tex.Civ.-App. - Dallas 1970, writ ref'd n.r.e.). Actual notice of a suit is insufficient if a defendant was not properly served in the manner prescribed by law. Shanbaum v. Janssen, 582 S.W.2d 590, 591 (Tex.-Civ.App. - Dallas 1979, no writ).

[3] Assuming that under the Idaho John Doe procedure, Jack H. Brown & Company was named as a defendant in the complaint as a "John Doe" doing business as Signgraphics, Northwest Sign must show that Jack H. Brown & Company was properly served as a John Doe defendant. Jack H.

Brown was served in the Idaho suit only as registered agent for Signgraphics, Inc., a separate corporation. Consequently, no service of process was had on Jack H. Brown & Company. Each defendant to a suit must be served with process. Anderson v. Brown, 16 Tex. 554, 555 (Tex. 1856).

Our holding is supported by Gillette Motor Transport Co. v. Whitfield, 160 S.W.2d 290 (Tex.Civ.App. - Fort Worth 1942, no writ), wherein plaintiff named Wichita Falls and Southern Railway Company as defendant and served its general manager. The party actually liable to plaintiff was Wichita Falls and Southern Railroad Company. The two companies had the same individual serving as president and used the services of the same attorney. The general manager of the railway company, served by plaintiff, was on the

board of directors of the railroad company. Nevertheless, the Court of Civil Appeals held that an amendment of plaintiff's pleadings, changing the defendant from the railway to the railroad company, was ineffective because the railroad company had never been made a party to the suit. 160 S.W.2d at 293-94. See also Astro Sign Co. v. Sullivan, 518 S.W.2d 420, 424 (Tex.Civ.App. - Corpus Christi 1974, writ ref'd n.r.e.).

[4] Even in jurisdictions allowing John Doe defendants, the party served must be put on notice that he is being served as a John Doe defendant. In Safeway Stores, Inc. v. Ramirez, 99 Ariz. 372, 409 P.2d 292 (1965), plaintiff named Safeway and a John Doe as defendants. Service was had on the store's manager. A default judgment was subsequently entered against the store and the manager

individually. The court reversed the judgment against the manager holding that "[I]t is not enough merely to serve a person with a process unless it is made known to him that he is a defendant and is being served in the place of one of the fictitious persons." 409 P.2d at 298. The process served on Jack H. Brown does not show that he was being served as the agent for service of process of a fictitious John Doe defendant doing business as Signgraphics. On the contrary, the process plainly indicates that he was served as agent for Signgraphics, Inc., the only named defendant in the Idaho lawsuit.

[5] Therefore, we hold that the Idaho judgment is not a judgment against Jack H. Brown & Company because the record affirmatively shows that the Idaho court rendering the default judgment did

not have personal jurisdiction over Jack H. Brown & Company in that Jack H. Brown & Company never received service of process. Accordingly, the order enforcing the Idaho default judgment against Jack H. Brown & Company is reversed and dismissed and the writ of garnishment dated March 22, 1983, against Republic National Bank of Dallas on the account of Jack H. Brown & Company d/b/a Signgraphics is vacated.

JACK H. BROWN & CO., Appellant

v.

NORTHWEST SIGN COMPANY and Republic National Bank in Dallas, Appellees.

No. 05-83-00887-CV.

Court of Appeals of Texas, Dallas.

Jan. 27, 1984

The 101st District Court, Dallas County, Craig T. Enoch, J., following debtor's filing of motion to vacate enforcement of foreign judgment, overruled debtor's motion to dissolve writ of garnishment and awarded judgment against

garnishee bank on foreign judgment, and debtor filed cost and supersedeas bond in both enforcement and garnishment actions and petition for writ of error and a bond in enforcement action. The Court of Appeals, Guittard, C.J., held that: (1) earlier filing of foreign judgment without complying with statutory requirements had no effect; (2) time limits for motion to vacate enforcement began from subsequently filed judgment which complied with statutory requirements; and (3) motion to vacate enforcement was properly permitted to be changed so as to show its filing in enforcement action rather than garnishment action.

Motion to dismiss overruled; motion to consolidate appeal and writ of error granted.

1. Appeal and Error ¶384(2), 467

Nothing was before Court of Appeals in nature of attempted appeal or petition for writ of error with respect to foreign judgment filed in district court without authentication as required by statute, as cost and supersedeas bonds filed by petitioner did not mention that judgment, petitioner was not named as judgment debtor in affidavit filed with judgment, and petitioner was not expected to respond to judgment which was filed without complying with statutory procedures. Vernon's Ann. Texas Civ. St. art. 2382b-5.

2. Appeal and Error ¶151(2)

Petitioner, who was not named as judgment debtor on foreign judgment filed with district court, had no standing to appeal from that judgment. Vernon's Ann. Texas Civ. St. art. 2328b-5.

3. Judgment ¶823

Although statute which governs filing of foreign judgments provides that foreign judgment has same effect as judgment of court in which it is filed, it has that effect only when judgment complies with statutory requirements of authentication and filing of affidavit naming parties and giving their addresses, and judgment debtor cannot be expected to respond and take such measures as may be available to him to avoid enforcement of foreign judgment unless statutory requirements have been met. Vernon's Ann. Texas Civ.St. art. 2328b5.

4. Appeal and Error ¶347(1)

Where foreign judgment originally filed did not comply with statutory requirements of authentication and filing of affidavit naming parties and giving their addresses, second filing of same judgment was original filing and time

limits for appeal and writ of error were counted from date of second filing. Vernon's Ann. Texas Civ. St. art. 2328b-5.

5. Appeal and Error ¶352

Judgment debtor's motion to vacate order enforcing judgment, erroneously filed in garnishment action, was properly permitted to be changed, in light of consideration of its substance rather than its formal parts, so as to show its filing in original action to enforce foreign judgment, and thus, was filed in that proceeding within prescribed 30-day limit and extended time for appealing from judgment. Vernon's Ann. Texas Rules Civ. Proc., Rules 71, 329b(a).

Steven E. Clark, Goins & Underkofler,

Charles L. Perry, Seay, Gwinn, Crawford & Womble, Dallas, for appellant.

Bertran T. Bader, III, Cox & Bader, Dallas, for appellees.

Before GUITTART, C.J., and STEWART and SHUMPERT, JJ.

GUITTARD, Chief Justice.

In this proceeding to enforce a foreign judgment appellee has moved to dismiss the appeal. Appellee questions whether an appeal has been perfected from the original filing or the subsequent filing of a foreign judgment pursuant to Article 2328b-5 of the Texas Revised Civil Statutes (Vernon Supp. 1982-83). We find that we have no appeal before us from the first filing, which was

ineffective because it did not comply with the statute. We hold that appellant has properly perfected an appeal from the second filing and, therefore, we overrule the motion to dismiss.

The judgment in question was recovered in a suit in a district court in Idaho. The Idaho complaint names as defendants "Signgraphics, Inc. a foreign corporation with its principal place of business in Dallas, Texas," and also "John Does I through X," who, it alleges, are "unknown partners ... doing business under the name of Signgraphics." The return on the nonresident process shows that it was served in Dallas, Texas, on "Signgraphics, delivering to its registered agent for service Jack H. Brown." The judgment, although it refers to "defendants, in the plural, awards

recovery of $1,951.47 "against defendant, Signgraphics, jointly and severally."

This judgement was filed in a district court of Dallas County on April 14, 1982, together with an affidavit of counsel, in attempted compliance with article 2328b-5 of the Texas Revised Civil Statues (Vernon Supp. 1982-83), which provides in part:

> Sec. 2 A copy of any foreign judgment authenticated in accordance with an act of congress or statutes of this state may be filed in the office of the clerk of any court of competent jurisdiction of this state. The clerk shall treat the foreign judgment in the same manner as a judgement of the court in which the foreign judgment is filed. A filed foreign judgment has the same effect and is subject to the same

> procedures, defenses, and proceedings for reopening, vacating, staying, enforcing, or satisfying as a judgment of the court in which it is filed. Sec. 3(a) At the time a foreign judgment is filed, the judgment creditor or the judgment creditor's attorney shall file with the clerk of the court an affidavit showing the name and last known post office address of the judgment debtor and the judgment creditor.

However, the judgement was not authenticated as required by the statute. The affidavit of counsel avers that the name of the judgment debtor is "Signgraphics, Inc.," and does not mention any other defendant.

On January 24, 1983, appellee applied for a writ of garnishment requiring Republic National Bank of Dallas to

answer whether it was indebted to Signgraphics, Inc. The garnishee filed an answer admitting that it was indebted to Jack H. Brown and Company, doing business as Signgraphics, in an amount in excess of the judgment. On March 22 the court signed an order reciting that a motion to dissolve the writ of garnishment had been filed by "Jack H. Brown and Company, Inc. d/b/a/ Signgraphics." This order overrules the motion to dissolve and directs the garnishee to "hold in reserve until further ruling $2,500 in Account No. 267-031-3 garnished by Northwest Sign Co. in this action."

On March 25, apparently as a result of a suggestion by the judge at the hearing on the motion to dissolve, appellee filed an identical copy of the Idaho judgment, this time properly authenticated, and other papers in the Idaho

suit. The affidavit of counsel accompanying this judgment avers that the name of the judgment debtor is "Signgraphics, Inc., John Does I through X d/b/a/ Signgraphics, a proprietorship or partnership." On April 22 "Jack H. Brown and Company, Inc." filed its "Motion to Vacate Enforcement of Foreign Judgment or Alternatively Motion for New Trial," alleging that the judgement debtor was "Signgraphics, Inc.," a corporation, but that plaintiff had instead garnished the bank account of "Jack H. Brown & Company, Inc. d/b/a/ Signgraphics." This motion bore the number and style of the garnishment action, but at a hearing on May 6, was changed with permission of the judge to bear the number and style of the original filing against "Signgraphics." After taking the matter under advisement, the judge signed an order on June 16

overruling the Motion and denying all relief. This order has no effect on this appeal because the Motion for New Trial was overruled by operation of law on June 8, seventy-five days after the date the judgment was filed. TEX.R.CIV.P. 329b(c). The judge also signed an order on June 30 overruling the motion to dissolve the writ of garnishment and awarding judgment against the garnishee bank for principal and interest on the Idaho judgment.

On July 7 Jack H. Brown and Company, Inc. filed in both causes a cost and supersedeas bond reciting the filing of the foreign judgment on March 24 (sic) and the garnishment judgment of June 30. (On timely motion, this court extended the time for filing the bond to July 7). On the same day Jack H. Brown and Company, Inc. also filed a petition for writ

of error and bond in the original cause naming as parties adversely interested appellee Northwest Sign Company, Inc., and the garnishee bank.

In this court appellant Jack H. Brown and Company, Inc. has filed a motion to consolidate the appeal and the writ of error, which appellee Northwest Sign Company opposes. Appellee also has filed a motion to dismiss the appeal for want of jurisdiction.

The motion to dismiss raises several contentions. The first is that, since article 2328b-5 provides that a foreign judgment filed in accordance with the statute has the same effect and is subject to the same procedures, defenses, etc., as a judgment of the court in which it is filed, a motion for new trial was due within thirty days after the original filing on April 14, 1982. The motion

asserts that since no motion was filed until more than a year later, the appeal should be dismissed and severed from the appeal in the garnishment action and this court should render judgment for appellee on the supersedeas bond.

[1-3] We conclude that nothing is before us in the nature of an attempted appeal or petition for writ of error from the judgment as filed in April 1982. The cost and supersedeas bond filed by appellant do not mention judgment as filed in April 1982. Moreover, appellant would have no standing to appeal from the judgment as then filed because the affidavit of counsel filed with the judgment, as required by the statute, names only "Signgraphics, Inc.," as judgment debtor. Although the statute provides that the foreign judgment has the same effect as a judgment of the court in which it is

filed, it has that effect only when the judgment complies with the statutory requirements of authentication and the filing of an affidavit naming the parties and giving their addresses. A judgment debtor cannot be expected to respond and take such measurements as may be available to him to avoid enforcement of a foreign judgment unless the statutory requirements have been met. Consequently, the motion to dismiss is overruled with respect to the judgment as originally filed.

[4] The second contention in the motion is that the appeal and writ of error should be dismissed with respect to the judgment as filed on March 25, 1983, because, if the judgment as originally filed has the same effect as a judgment of the Texas court, a second filing of the same judgment could not extend the

time for appeal any more than could another Texas judgment signed after expiration of the time of appeal from the first. This contention also is untenable, and for similar reasons. We cannot give the original judgment the same effect as a Texas judgment because of appellee's failure to comply with the statutory requirements of authentication and the filing of an affidavit naming the parties and giving their addresses. So far as concerns appellant Jack H. Brown and Company, Inc., we treat the filing of March 1983 as an original filing of the Idaho judgment.

[5] Appellee also asserts that appellant's "Motion to Vacate Enforcement of Foreign Judgment or Alternatively Motion for New Trial," filed April 22 in the garnishment action and later changed, with the court's permission, so as to be

filed in the original proceding, did not extend the time for appealing from the judgment as filed in March 1983 because it was not filed in that proceeding within the thirty-day limit prescribed by rule 329b(a) of the Texas Rules of Civil Procedure. We hold that the trial court properly considered the substance rather than the formal parts of the motion, correctly concluded that appellant's motion was filed in the garnishment action by mistake, and properly permitted it to be changed so as to show its filing the original action. Anderson v. Welch, 92 S.W.2d 1121 (Tex.Civ.App.--Texarkana 1936, writ dism'd); Tex.R.Civ.P.71. This holding does not adversely affect appellee because appellant has perfected a timely writ of error, as it is entitled to do under article 2249a of the Texas Revised Civil Statutes (Vernon Supp.1982-

83), since it did not participate in the trial of the action in Idaho and we must treat the judgment as filed in March 1983, as a Texas judgment. Accordingly, we overrule appellee's motion to dismiss for want of jurisdiction and grant appellant's motion to consolidate the appeal and writ of error. Thus, we have before us for review (1) the Idaho judgment in the original action, as filed in March 1983 and (2) the garnishment judgment of June 30, 1983.

Motion to dismiss overruled.

Motion to consolidate granted.

NO. 82-3928-E

NORTHWEST SIGN CO.	§	IN THE DISTRICT
	§	COURT
	§	101ST JUDICIAL
VS.	§	DISTRICT
	§	DALLAS COUNTY,
SIGNGRAPHICS, INC.	§	TEXAS

FINDINGS OF FACT
CONCLUSIONS OF LAW

FINDINGS

1. Jack B. Brown is registered agent for both Signgraphics, Inc., and Jack H. Brown, Inc., d/b/a Signgraphics.

2. Jack H. Brown as registered agent was served with the Summons in Cause No. A-2092, Northwest Sign Company vs. Signgraphics, a foreign corporation; John Does I through X; d/b/a Signgraphics, a proprietorship or partnership, out of the District Court of Bonneville County, Idaho.

3. According to the return on the Summons, Jack H. Brown received the Summons as follows: "Signgraphics by delivering to its registered agent for service Jack H. Brown, on the 10th day of October, 1981, at 11:38 A.M."

CONCLUSIONS

1. Signgraphics, Inc., John Does I through X, d/b/a Signgraphics, a proprietorship or partnership, was properly before the Court in Idaho. The Judgment in A-2092 is valid.

Signed the 28th day of July, 1983.

/s/ CRAIG ENOCH
Judge Presiding

ENDORSEMENT OF INSTRUMENT NO. 82-3928-E
Northwest Sign Co.
Vs.
Signgraphics, Inc.
FINDINGS OF FACT - CONCLUSIONS OF LAW
Filed: July 28, 1983 BILL LONG,
Dallas County, Texas District Clerk
/s/_____,
Deputy

NO. 83-1043-E

NORTHWEST SIGN CO., an Idaho Corporation,	§	IN THE DISTRICT COURT
Plaintiff,	§	
VS.	§	DALLAS COUNTY, TEXAS
REPUBLIC NATIONAL BANK,	§	
Defendants.	§	101ST JUDICIAL DISTRICT

FINDINGS OF FACT
AND CONCLUSIONS OF LAW

1. That at the time of the serving of the garnishment proceeding on Garnishee, RepublicBank Dallas, National Association (formerly known as Republic National Bank of Dallas), Garnishee was indebted to Jack H. Brown & Co. d/b/a Signgraphics in a sum sufficient to discharge judgment held by Plaintiff Northwest Sign Co. v. Signgraphics, Inc., et al in Cause No. 82-3928-E;

2. That the original action in Idaho, Cause No. A-2092 was brought against Signgraphics, Inc. a foreign corporation; John Does I through X d/b/a Signgraphics, a proprietorship or partnership;

3. Jack H. Brown is the registered agent for both Signgraphics, Inc. and Jack H. Brown, Inc. d/b/a Signgraphics;

4. That Signgraphics is the assumed or common name under which Jack Brown & Co., Inc. does business;

5. That Signgraphics was the assumed or trade name under which business was done with Plaintiff Northwest Sign Company and giving rise to the original controversy and judgment in Idaho leading to this garnishment;

6. That prior to the time of filing of the judgment in this cause and prior to the time of the filing of the intervention by Jack H. Brown & Co., Inc., Jack H. Brown & Co. had no assumed name affidavit on file with the County Clerk of Dallas County, Texas.

CONCLUSIONS OF LAW

1. Signgraphics, Inc.; John Does I through X d/b/a Signgraphics, a proprietorship or partnership were properly before the Court in Idaho. The judgment in Cause No. A-2092 is valid;

2. As action may be brought against the assumed or trade name of an entity, the Idaho judgment and foreign filing of judgment in Cause No. 82-3928-E was sufficient to reach Jack H. Brown & Co., Inc. as the assumed or trade name of Jack H. Brown & Co., Inc. in this transaction was Signgraphics;

3. Plaintiff's action against Garnishee Republic Bank to garnish the account styled Jack H. Brown & Co., Inc. d/b/a Signgraphics is proper and maintainable.

/s/ Craig Enoch

ENDORSEMENT ON INSTRUMENT NO. 83-1043-E
Northwest Sign Co., an Idaho
Corporation, Plaintiff
VS.
Republic National Bank of Dallas,
Defendants
FINDINGS OF FACT AND CONCLUSIONS
OF LAW
Filed: September 8, 1983
Dallas County, Texas
BILL LONG, District Clerk
/s/ Flo Coleman, Deputy

NO. C-3491	§	
	§	
NORTHWEST SIGN COMPANY, an Idaho Corporation,	§	
	§	
Petitioners	§	From Dallas
	§	
vs.	§	County, Fifth
	§	
JACK H. BROWN & COMPANY, INC.,	§	District
	§	
Respondents	§	

This cause was reviewed on application for writ of error from the Court of Appeals for the Fifth Supreme Judicial District. The original transcript and the transcript showing the proceedings in the court of appeals were considered.

It is the opinion of the court there is error in the judgment of the court of appeals which reversed the judgment of the trial court. The trial court held that the suit to enforce a foreign judgment was valid because the service of process on the original defendant in the foreign action was proper, therefore, the

writ of garnishment filed for satisfaction of the judgment was proper.

The application for writ of error is granted. Under the provisions of Tex. R. Civ. P. 483, without hearing oral argument in the cause, and in accordance with the opinion of this court,

it is ordered that:

1) the judgment of the court of appeals is reversed.

2) The judgment of the trial court is affirmed.

3) Jack H. Brown & Company, Inc. shall pay the costs in this court and the court of appeals.

4) Northwest Sign Company, an Idaho Corporation shall recover its costs in those courts from Jack H. Brown & Company, Inc.

A copy of this judgment shall be certified to the District Court of Dallas County, Texas for observance.

(Per Curiam Opinion)

SUPREME COURT OF TEXAS
P. O. Box 12248
Supreme Court Building
Austin, Texas 78711
Garson R. Jackson, Clerk

December 19, 1984

Mr. Bertran T. Bader, III
211 North Ervay
Suite 1004
Dallas TX 75201

Mr. Steven E. Clark
Goins & Underkofler
1015 RepublicBank Tower
Dallas TX 75201

RE: Case No. C-3491

STYLE: NORTHWEST SIGN COMPANY, AN IDAHO CORPORATION V. JACK H. BROWN & CO., INC.

Dear Counsel:

Today, the Supreme Court of Texas overruled the motion for rehearing in the above referenced cause.

Respectfully yours,

Garson R. Jackson, Clerk

By/s/ Courtland Crocker
Deputy

IN THE SUPREME COURT OF THE
STATE OF TEXAS

JACK H. BROWN & CO., INC., Appellant,	§	
V.	§	
NORTHWEST SIGN COMPANY, an Idaho Corporation,	§	No. C-3491
Appellee.	§	

NOTICE OF APPEAL TO THE SUPREME
COURT OF THE UNITED STATES

Notice is hereby given that Jack H. Brown & Co., Inc. the appellant above-named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Texas, reversing the Court of Appeals and enforcing the judgment of the trial court, entered in this action on November 21, 1984, and from the Order overruling Appellant's Motion for Rehearing, entered on December 19, 1984.

This appeal is taken pursuant to 28 U.S.C. §1257(2).

Respectfully submitted,

GOINS, UNDERKOFLER,
CRAWFORD & LANGDON
3300 Thanksgiving Tower
Dallas, Texas 75201
214/969-5454

By: /s/ Steven E. Clark
Steven E. Clark

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Appeal has been sent via certified mail, return receipt requested to the following persons on this 15th day of March, 1985:

Bertran T. Bader, Esq.
211 North Ervay Blvd., Suite 1004
Dallas, Texas 75201
ATTORNEY FOR NORTHWEST SIGN COMPANY

Edward T. Perrin, Jr., Esq.
Gardere & Wynne
1500 Diamond Shamrock Tower
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ATTORNEY FOR REPUBLICBANK DALLAS, N.A.

Ms. Debbie Mallin, Clerk
101st District Court
Dallas County Courthouse
Dallas, Texas 75202

/s/ Steven E. Clark
Steven E. Clark

IN THE SUPREME COURT OF THE
STATE OF TEXAS

JACK H. BROWN & CO., INC., Appellant,	§	
V.	§	
NORTHWEST SIGN COMPANY, an Idaho Corporation,	§	(83-1043-E)
Appellee.	§	No. C-3491

NOTICE OF APPEAL TO THE SUPREME
COURT OF THE UNITED STATES

Notice is hereby given that Jack H. Brown & Co., Inc. the appellant above-named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Texas, reversing the Court of Appeals and enforcing the judgment of the trial court, entered in this action on November 21, 1984, and from the Order overruling Appellant's Motion for Rehearing, entered on December 19, 1984.

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101st District Court
Dallas County Courthouse
Dallas, Texas 75202

/s/ Steven E. Clark
Steven E. Clark

IN THE SUPREME COURT OF THE
STATE OF TEXAS

JACK H. BROWN & CO., INC., Appellant,	§	
V.	§	
NORTHWEST SIGN COMPANY, an Idaho Corporation,	§	(82-3928-E)
Appellee.	§	No. C-3491

NOTICE OF APPEAL TO THE SUPREME
COURT OF THE UNITED STATES

Notice is hereby given that Jack H. Brown & Co., Inc. the appellant above-named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Texas, reversing the Court of Appeals and enforcing the judgment of the trial court, entered in this action on November 21, 1984, and from the Order overruling Appellant's Motion for Rehearing, entered on December 19, 1984.

This appeal is taken pursuant to 28 U.S.C. §1257(2).

Respectfully submitted,

GOINS, UNDERKOFLER,
CRAWFORD & LANGDON
3300 Thanksgiving Tower
Dallas, Texas 75201
214/969-5454

By: /s/ Steven E. Clark
Steven E. Clark

CERTIFICATE OF SERVICE

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Ms. Debbie Mallin, Clerk
101st District Court
Dallas County Courthouse
Dallas, Texas 75202

/s/ Steven E. Clark
Steven E. Clark

NO. 82-3928-E

NORTHWEST SIGN CO.	§	IN THE DISTRICT
	§	COURT OF DALLAS
VS.	§	COUNTY, TEXAS
	§	101ST JUDICIAL
SIGNGRAPHICS	§	DISTRICT

MOTION TO VACATE ENFORCEMENT
OF FOREIGN JUDGMENT OR ALTERNATIVELY
MOTION FOR NEW TRIAL AND SUPPORTING BRIEF

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Jack H. Brown & Company, Inc., and files this its Motion to Vacate Enforcement of Foreign Judgment or alternatively, Motion for New Trial and in support of same would respectfully show unto the Court the following:

I.

FACTUAL BACKGROUND

On or about April 15, 1982, Plaintiff Northwest Sign Co. (Northwest) filed its Notice of Filing of Foreign Judgment with the District Clerk of Dallas County, Texas. Said Notice was filed pursuant to the provisions of Article 2328b-5 §1 et

seq, Tex.Rev.Civ.Stat. (1981), known as the Uniform Enforcement of Foreign Judgments Act. The Notice indicated that Plaintiff had filed a foreign judgment with the District Clerk on April 14, 1982, and that the judgment debtor was Signgraphics, Inc. A true and correct copy of said Notice is attached hereto as Exhibit "A" and incorporated herein by reference.

Thereafter, Plaintiff instituted a garnishment proceeding in an attempt to enforce said foreign judgment against Signgraphics, Inc. However, Plaintiff instead garnished the account of Jack H. Brown & Company, d/b/a Signgraphics, said account being established at Republic National Bank of Dallas. The garnishee filed its sworn original answer indicating that at the time of the service of the writ of garnishment and at the

present time, garnishee was and is indebted to Jack H. Brown & Company, d/b/a Signgraphics (hereinafter JHBCo.), but has no account or property belonging to Signgraphics, Inc.

Thereafter, JHBCo. filed its sworn Motion to Dissolve the Writ of Garnishment, which motion and supporting affidavit is incorporated herein by reference as if fully set forth verbatim. In said Motion, JHBCo. indicated that the account garnished by Plaintiff represented the account of a Texas corporation (JHBCo.) separate and distinct from Signgraphics, Inc., which is another Texas corporation and the judgment debtor referenced in Plaintiff's Notice of Filing of Foreign Judgment. Moreover, said motion and sworn affidavit indicated that JHBCo. had never done business as Signgraphics, Inc., nor had Signgraphics, Inc. ever

done business as JHBCo. Accordingly, Signgraphics, alleged that Plaintiff had wrongfully garnished its account while seeking to enforce a judgment against another Texas corporation, and sought dissolution of the writ of garnishment. A hearing was held on said motion in chambers, and at the request of the Court, JHBCo. filed its letter brief of authorities in support of said motion, which is incorporated herein by reference. This motion is still pending before the Court.

Since the hearing on the above-referenced motion, Plaintiff on or about March 24, 1983, filed its Amended Filing of Foreign Judgment and supporting affidavit. Attached to said amended filing was authentication from officials in Idaho of the underlying judgment, summons, return of service, Plaintiff's

Idaho complaint, memorandum regarding costs and attorney's fees, and affidavit for default. The amended affidavit in support of the amended filing of foreign judgment, executed by Plaintiff's Texas counsel, indicates that the name of the judgment debtor in the amended filing is Signgraphics, Inc. and John Doe's I through X, d/b/a Signgraphics, unknown proprietors or partners.

In the early part of April, JHBCo.'s attorney received in the mail copies of an order and judgment entered by the Idaho court (upon the motion of Plaintiff to amend Plaintiff's complaint and judgment) to designate the true name of Defendant John Doe I to be John H. Brown & Company, d/b/a Signgraphics. Said order and amended judgment was entered by the Idaho court on or about March 31, 1983. True and correct copies of said

order and judgment are attached hereto as Exhibit "B" and incorporated herein by reference.

II.

ENFORCEMENT OF THE FOREIGN JUDGMENT IS NOT WARRANTED

Pursuant to Section 2 of Article 2328b-5, which indicates that "a filed foreign judgment has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, staying, enforcing, or satisfying as a judgment of the court in which it is filed", JHBCo. moves the Court to enter an order finding that the original foreign judgment filed by Plaintiff and/or the amended judgment (Exhibit "B") are not entitled to full faith and credit in Texas with respect to JHBCo. or Signgraphics, Inc. because the Idaho court has never obtained proper service of process and jurisdiction over JHBCo. or

Signgraphics, Inc., and accordingly said judgment is void and unenforceable with respect to JHBCo. or Signgraphics, Inc. In the alternative, JHBCo., pursuant to Rule 320 of the Texas Rules of Civil Procedure, moves the Court to grant it a new trial with respect to Plaintiff's cause of action.

Both Plaintiff's original filing of foreign judgment and amended filing of foreign judgment rely upon the same summons and citation, judgment, and Idaho complaint. Paragraph II of said complaint indicates that John Doe's I through X are unknown partners or unknown proprietors doing business under the name of Signgraphics, that said Defendants are made Defendants herein by fictitious names and that Plaintiff request leave of court to amend the complaint once their proper names are ascertained. The only

named Defendant in said complaint is Signgraphics, Inc., a foreign corporation with its principal place of business in Dallas, Texas. It is clear from a review of the documents on file with the Court that only one summons and complaint were issued by the Idaho clerk and served in Texas. That summons was served upon Jack H. Brown, as registered agent for Signgraphics. Therefore, the Idaho documents upon which Plaintiff relies on their face indicate that the only service made for purposes of the default judgment was upon Jack H. Brown as registered agent for the only named Defendant in the Idaho complaint, Signgraphics, Inc. With respect to JHBCo., a defect plainly appears on the face of the record because the citation upon which Plaintiff relies was not directed in any manner to Jack H. Brown & Company, a separate Texas corporation.

The Texas courts have indicated that the law of the state in which the foreign judgment was entered will determine the sufficiency of the service of process upon which the judgment is based. See Fox v. Fox, 526 S.W.2d 180, 182 (Tex.Civ.App.--Dallas 1975, no writ). However, where the law of the foreign judgment has not been properly pleaded and proved, the Texas courts must presume that the foreign jurisdiction's law is the same as Texas law. See Lincoln Bank & Trust Co. v. Webb, 620 S.W.2d 174, 177 (Tex.Civ.App.--San Antonio 1981, no writ). Where applicable or ascertainable, Signgraphics will cite the Court to Idaho procedure and case authority. However, there appear to be no Idaho decisions directly addressing the issue before this Court, and therefore Signgraphics cites to and

relies upon specific Texas authorities addressing the precise issue at hand.

It has long been the law of Idaho that a service of summons on a foreign corporation to be valid must be made in the manner prescribed by statute, and for want of proof of valid service of summons, the clerk has no jurisdiction to enter a default judgment against said foreign corporation. See Applington v. G.V.B. Mining Co., 55 P. 241, 242 (Idaho 1898). Jurisdiction to enter a default judgment is based on the fact of service, not on the return which is only evidence of it. See Manson v. Pelkes, 59 P.2d 1087, 1090 (Idaho 1936). As the Idaho Supreme Court stated in Vermont Loan & Trust Co. v. McGregor, 51 P. 104, 105 (1897):

> The practice of rendering judgment against the defendant who has not appeared in the action, where there is no proof

> of service upon him, is a dangerous one, and would lead to serious consequences, and cannot be tolerated.

Texas law is in full accord. See Kempner v. Jordan, 26 S.W. 870, 871-82 (Tex.Civ.-App.--1984, writ ref'd).

Section 30-1-115 of the Idaho statutes provides for service of process on a foreign corporation. Service is to be made upon its registered agent if the foreign corporation is authorized to transact business in the state. Where the foreign corporation is authorized to transact business but fails to maintain a registered agent in the state or where the registered agent cannot with reasonable diligence be found, then any process, notice or demand required or permitted by law to be served upon the corporation may be served by mailing copies of the process, notice or demand

by registered or certified mail to the corporation addressed to its registered office and to the president or secretary of the corporation. Section 30-114 of the Idaho statutes also provides that service on a corporation shall be through its registered agent, but where a corporation fails to appoint or maintain a registered agent in the state or said agent cannot be found with reasonable diligence, then service can be made upon the corporation by mailing copies of the process, notice and demand by registered or certified mail to the corporation addressed to its registered office and to the president or secretary of the corporation. Idaho Rule of Civil Procedure 3(b) provides, inter alia, that all civil actions by or against a corporation shall designate such party in its corporate name only. Rule 4(a) of the Idaho Rules

of Civil Procedure provides that at the request of plaintiff within one year after filing of the complaint, the clerk of the district court shall issue a summons and deliver it for service, and upon request of plaintiff separate or additional summons shall issue against any defendant within such time as the original might have issued. Rule 4(e)(1), Idaho Rules of Civil Procedure, states:

> Whenever a statute of the state provides for service of a summons, or of a notice, or of an order in lieu of summons, upon a party not an inhabitant of, or found within the state, or upon unknown persons, service shall be made under the circumstances and in the manner prescribed by the statute. Personal service outside of the state, when authorized by statute, shall be as provided by Rule 4(d).

Rule 4(d)(4), Idaho Rules of Civil Procedure, provides for service upon domestic

or foreign corporation. Subpart (A) provides how service is made:

> Upon a domestic or foreign corporation by delivering a copy of the summons and complaint to an officer, managing or general agent, or to any other agent authorized by appointment or by statute of the state to receive service of process.... *** If service is made upon a statutory agent, any statutory requirement as to the number of copies of summons and complaint to be served shall be followed....

Subpart (B) provides:

> Whenever any foreign corporation which has qualified in the state by filing with the Secretary of State or a domestic corporation or association shall not have designated a person actually residing in the state upon whom service of process can be made, or whenever such agent of a corporation shall resign, be removed from office, or shall have died or shall have removed himself from the state, or if after due diligence neither the designated agent or the corporation or any officer or managing agent of the corporation can be found within the state, then service of any summons and complaint against the corporation may be

> made by the party serving the same by mailing copies of the summons and complaint by registered or certified mail to the corporation addressed to its registered place of business and to the president or secretary of the corporation ... *** The party or attorney serving the corporation under this paragraph shall make a return certificate indicating that he complied with the provision of this rule and attaching a receipt of the mailing.

Thus, it is clear from a review of the Idaho case law, statutory authority, and rules of civil procedure that service was not properly made and perfected against any of the Defendants (ie, JHBCo. or Signgraphics, Inc.) upon which Plaintiff seeks to enforce its foreign judgment.

It is a cardinal principle of constitutional law that the due process clause of the Fourteenth Amendment requires notice which is reasonably calculated under all the circumstances to apprise interested parties of the

pendency of the action and afford them an opportunity to present their objections. See Mullane v. Central Hanover Bank, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950); Schroeder v. New York, 371 U.S. 208, 83 S.Ct. 279, 19 L.Ed.2d 255 (1962). Both Texas and Idaho law are in accord. See Sgitcovich v. Sgitcovich, 150 Tex. 398, 241 S.W.2d 142, 146 (1951). In Mason v. Pelkes, supra the Idaho Supreme Court stated that courts of a state are not required to give full faith and credit to a judgment rendered by a court of another state which had no jurisdiction of the subject matter or of the parties. See also Ennis v. Casey, 72 Idaho 181, 238 P.2d 435, 438-39 (1951) (default judgment against corporation held error where it received no notice of service and made no appearance in the case).

Assuming arguendo that the method of service reflected in the documents on file with the court was in a manner authorized and prescribed by Idaho law with respect to Signgraphics, Inc., said service of process is still insufficient with respect to Jack H. Brown & Company, which has never been served with sufficient service upon which to predicate a judgment under either Idaho or Texas law. In Texas, no judgment can be entered against a defendant who has not been duly served. Texas Rule of Civil Procedure 124. Courts in Texas adhere to the following principle regarding service of process:

> Rules relating to service of process are mandatory, and a default judgment based upon citation and service not complying therewith is void if the defect is apparent from the face of the record.

Texas Inspection Services, Inc. v. Melville, 616 S.W.2d 253, 254 (Tex.Civ.-App.--Houston [1st Dist.] 1981, no writ); Lamesa Rural High School Dist. v. Speck, 253, S.W.2d 315, 316 (Tex.Civ.App.--Eastland 1952, writ ref'd n.r.e.). Furthermore, Texas courts have repeatedly set aside default judgments where the citation failed to correctly state the defendant's name. See Southern Pacific Co. v. Block Bros., 84 Tex. 21, 22, 19 S.W. 300, 301 (1892) (citation directed to Southern Pacific Railway Co., a different entity from Southern Pacific Co.); Hendon v. Pugh, 46 Tex. 211, 212 (1876) (citation named J. W. Hendon and return showed service on J. N. Hendon); Faver v. Robinson, 46 Tex. 204, 205 (1876) (citation directed to "Favers", judgment against "Faver"); Brown-McKee, Inc. v. J. F. Bryan & Associates, 522 S.W.2d 958,

959 (Tex.Civ.App.--Texarkana 1975, no writ) (citation directed to Brown-McKee Const. Co. instead of Brown-McKee, Inc.); Nail v. Gene Biddle Feed Co., 347 S.W.2d 830, 831 (Tex.Civ.App.--Beaumont 1961, no writ) (citation to "B. F. Nail", judgment against his father, "Frank Nail"); Zimmerman v. First National Bank, 235 S.W.2d 720, 722-24 (Tex.Civ.App.--Fort Worth 1950, writ ref'd n.r.e.) (transposition of garnishee's initials destroys default judgment based on the writ "T. W." instead of "W. T.").

As is indicated in more detail in Signgraphics' Motion to Dissolve Writ of Garnishment and supporting letter brief, the present sitation is not one concerning misnomer of a party, but instead involves the naming and service of the wrong party. In this situation, the rule

to be applied by the Texas courts is clear:

> This rule is also applicable where the plaintiff is mistaken as to which of two corporations or persons is liable in the case. In that instance, the defendant is under no duty to notify the plaintiff of its mistake. Further, knowledge of the action by the person or corporation actually liable would not be enough to allow substitution of that party for the party who is sued but is not actually liable. Moreover, this rule is applicable even where the corporation actually sued and served with citation and the corporation which is actually liable has the same agent for service.

Astro Sign Co. v. Sullivan, 518 S.W.2d 420, 424 (Tex.Civ.App.--Corpus Christi 1974, writ ref'd n.r.e.) (emphasis added). See also, Marez v. J. B. Moeck, 608 S.W.2d 740, 741-42 (Tex.Civ.App.--Corpus Christi 1980, no writ); Gillette Motor Transport Co. v. Whitfield, 160 S.W.2d

290, 293 (Tex.Civ.App.--Fort Worth 1942, no writ).

Should there by any lingering doubts whether the service upon Jack H. Brown as registered agent for JHBCo. is sufficient to constitute service upon Jack H. Brown & Co., a separate Texas corporation from Signgraphics, Inc., JHBCo. would refer the Court to the Texas Supreme Court decisions in Covington v. Burleson, 28 Tex. 368, 371 (1866) and Anderson v. Brown, 16 Tex. 554, 555 (Tex. 1856) which clearly hold that where plaintiff's suit is against more defendants than one, the summons must contain the names of all defendants, be issued to all, a copy of same should be personally served upon each defendant, and a default judgment not in accord with this procedure is void and of no effect.

Finally, Plaintiff's attempt to amend the Idaho judgment to reflect that John Doe I in the complaint and judgment is "John H. Brown & Co., d/b/a Signgraphics" is contrary to Idaho's procedural law and null and void. Rule 59, Idaho Rules of Civil Procedure, provides that a motion to amend judgment is properly denied where more than ten days have elapsed from the entry of the judgment. See Johnston v. Pascoe, 599 P.2d 985, 990 (Idaho 1979). The original judgment in Idaho was entered by the Idaho court on November 19, 1981. The amended judgment (Exhibit "B") was entered on March 31, 1983, one and a half years after the original judgment was entered. Moreover, where the Plaintiff amends on a matter of substance, it has in effect opened the default on the original pleading. See Vermont Loan & Trust Co. v. McGregor, 51

P. 104 (Idaho 1897), and under Idaho Rule of Civil Procedure 55(c) and 60(b), JHBCo. has up to a year to make application to open the default and allow it to file an answer on the merits. See Brooks v. Orchard Land Co., 21 Idaho 212, 121 P. 101 (1912). See also Compton v. Compton, 101 Idaho 328, 612 P.2d 1175 (1980).

III.

Finally, another reason justifying relief to JHBCo. is the fact that JHBCo. has a claim against Plaintiff for $2,250.55 for unpaid materials delivered by it to Plaintiff. JHBCo. states that Plaintiff has breached an agreement with JHBCo. and JHBCo. is entitled to recover its damages, court costs and attorneys' fees from Plaintiff. This claim has never been adjudicated by any court and should be heard on the merits along with Plaintiff's contract claim.

WHEREFORE, PREMISES CONSIDERED, Jack H. Brown & Co., d/b/a Signgraphics prays that its Motion to Vacate Enforcement of Foreign Judgment or alternatively Motion for New Trial be in all respects granted and for such other and further relief, general or special, at law or in equity, to which it may show itself to be justly entitled.

NO. 05-83-00887-CV

IN THE
COURT OF APPEALS
FOR THE
FIFTH SUPREME JUDICIAL DISTRICT OF
TEXAS, DALLAS, TEXAS

JACK H. BROWN & CO., INC.
Appellant,

VS.

NORTHWEST SIGN COMPANY
AND REPUBLIC NATIONAL
BANK IN DALLAS
Appellees.

Appeal from
The District Court of Dallas County,
Texas, 101st Judicial District

APPELLANT'S BRIEF

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ATTORNEYS FOR JACK H. BROWN &
CO., INC.

NO. 05-83-00887-CV

IN THE
COURT OF APPEALS
FOR THE
FIFTH SUPREME JUDICIAL DISTRICT OF
TEXAS, DALLAS, TEXAS

JACK H. BROWN & CO., INC.
Appellant,

VS.

NORTHWEST SIGN COMPANY
AND REPUBLIC NATIONAL
BANK IN DALLAS
Appellees.

Appeal from
The District Court of Dallas County,
Texas, 101st Judicial District

APPELLANT'S BRIEF

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Appellant Jack H. Brown & Co., Inc., and files this its Appellant's Brief, as follows:

POINTS I - IX (RESTATED)

I.

The Idaho judgment is void as to Jack H. Brown & Company, Inc., because

said defendant was not named as a party nor served with process.

II.

The Court erred in failing to dissolve the garnishment as to sums belonging to Jack H. Brown & Company, Inc., because such defendant is not a judgment debtor.

III.

The Court erred in failing to dissolve the garnishment as to sums belonging to Jack H. Brown & Company, Inc., because there was no judgment as to this company at the time the writ of garnishment was issued.

IV.

There is no evidence that Jack H. Brown & Company, Inc., was served with process in the Idaho case.

V.

There is insufficient evidence to support a finding that Jack H. Brown & Company, Inc., was served with process in the Idaho case.

VI.

The court erred in holding that Jack H. Brown & Company, Inc., is a judgment debtor under the Idaho judgment.

VII.

There is no evidence that Jack H. Brown & Company, Inc., is a judgment debtor under the Idaho judgment.

VIII.

There is insufficient evidence to support a finding that Jack H. Brown & Company, Inc. is a judgment debtor under the Idaho judgment.

IX.

Enforcement of the Idaho judgment against Jack H. Brown & Company, Inc., violates its right to due process.

ARGUMENT AND AUTHORITIES

Northwest Sign Company filed suit in Idaho against "Signgraphics, a foreign corporation; John Does I through X,...

...does, business under the name "Signgraphics." The Writ of Garnishment makes no allegations which would make Jack H. Brown & Company, Inc. liable for the judgment. The writ was simply directed at Signgraphics, Inc., and erroneously identified a certain account as belonging

to Signgraphics, Inc., which account actually belonged to Jack H. Brown & Company, Inc. However, Jack H. Brown & Company, Inc., was never served with citation in the Idaho case, nor did it enter an appearance in that case. The two corporations are separate and distinct entities, and Northwest has not contended that either corporation is the alter ego of the other. Northwest received materials which clearly identified the contracting corporation as Jack H. Brown & Company, Inc. (SOF 48, 49). The undisputed evidence also establishes that Northwest is indebted to Jack H. Brown & Company, Inc., in an amount in excess of the claim made in the Idaho lawsuit. [SOF 45, 54].

Northwest contended that Jack H. Brown & Company, Inc. was one of the "John Doe" defendants and that the

judgment was therefore effective as to that corporation, as well as to Signgraphics, Inc. Only one summons was served in the Idaho case, and that was upon Signgraphics, Inc., by serving its registered agent in Texas, Mr. Jack H. Brown, at his home. No appearance was made in Idaho on behalf of any defendant.

Northwest would have the Texas courts enforce a judgment against Jack H. Brown & Company, Inc., a party not served with process and which did not voluntarily appear. Such a position violates the due process clauses of the Constitutions of the United States, Texas and Idaho. United States Const., Amend. V & XIV; Texas Const. Art. I, §19; Idaho Const. Art. I, §13. Judgment may only be rendered against those defendants who are properly served with process or who enter an appearance. Houston v. Ward, 8 Tex.

124 (1852); Zenith Radio Corp. v. Hazeltine Research, Inc., 395 U.S. 100, 110, 23 L.Ed. 2d 129, 89 S.Ct. 1562 (1969). Since Jack Brown & Company, Inc. did neither, the Idaho judgment is void insofar as Northwest Sign Company asserts that it is binding on Jack H. Brown & Company, Inc.

Service on Signgraphics, Inc., a separate corporation, is wholly ineffective to sustain a judgment against Jack H. Brown & Company, Inc.

> [I]f the plaintiff is mistaken as to which of two persons is liable and obtains a service upon the wrong party and then subsequently amends his petition to join the proper party, such amended petition is a new lawsuit and the statute of limitations is not tolled until the plaintiff files his amended petition. Further, if the plaintiff mistakenly obtains service upon the wrong party, the defendant is under no duty to notify the plaintiff of his mistake and knowledge of the action by the person actually liable would not be enough to

> allow substitution of that party for the party who is sued.

Marez v. Moeck, 608 S.W.2d 740, (Tex.-Civ.App. - Corpus Christi 1980, no writ); Accord Astro Sign Co. v. Sullivan, 518 S.W.2d 420, 423-24 (Tex.Civ.App. - Corpus Christi 1974, writ ref'd n.r.e.); Gillette Motor Transfer Co. v. Whitfield, 160 S.W.2d 290, 292-94 (Tex.Civ.App. - Fort Worth 1942, no writ). Moreover, in Gunter v. Glasgow, 608 S.W.2d 273, 275-76 (Tex.Civ.App. - Eastland 1980, no writ), the court held that a Kansas judgment was not binding on a Texas resident who was not named as a party in the Kansas proceeding, even though served with process.

Even in those jurisdictions which permit the use of the "John Doe" procedure, it is recognized that the plaintiff must properly serve each defendant with process. For example, Safeway Stores,

Inc. v. Ramarez, 99 Ariz. 372, 409 P.2d 292 (1965)(en banc), involved a suit against Safeway and "John Doe and Jane Doe, his wife", with the "John Doe" defendant allegedly being the store's manager. Service was made on Antonio Carmona, the store's manager, by leaving three copies of the process with him, and default judgment was entered as to Safeway and Mr. and Mrs. Carmona. In reversing, the court held that the service failed to place the Carmonas on notice that they were being served as "John and Jane Doe," rather than as purported agents for Safeway. "It is not enough merely to serve a person with a process unless it is made known to him that he is a defendant and is being served in the place of one of the fictitious persons." 409 P.2d at 298. See also Freeman v. State Farm Mutual Ins. Co., 14 Cal. 3d

473, 121 Cal. Rptr. 477, 535 P.2d 341, 349-50 (1975)(en bank).

Appellant knows of no authority which would permit a valid judgment to be rendered against a John Doe defendant, particularly in the absence of service of citation. In the trial court, Northwest relied upon Continental Southern Lines, Inc. v. Hilland, 528 S.W.2d 828 (Tex. 1975) and Cohen v. C. H. Leavell & Co., Inc., d/b/a Kern Plaza, 520 S.W.2d 793 (Tex.Civ.App. - El Paso 1975, no writ). Each of these cases involved a timely lawsuit filed against the wrong defendant, with subsequent amendment to include the proper defendant after limitations had run. The courts held that limitations did not bar the claims on the facts. However, the correct defendant in each case, was named in an amended petition and apparently either served with

process or appeared voluntarily. In each case, the appellate court simply remanded the case for trial on the merits, including the limitation question. That is a far cry from permitting service on one corporate defendant to support judgment and execution against a separate and distinct corporation, especially in a garnishment proceeding.

Additionally, the unknown defendants I through X in Northwest's Idaho complaint are identified as "a...

NO. 05-83-00887-CV

IN THE
COURT OF APPEALS
FOR THE
FIFTH SUPREME JUDICIAL DISTRICT OF TEXAS
DALLAS, TEXAS

JACK H. BROWN & CO., INC.,

Appellant,

VS.

NORTHWEST SIGN COMPANY and
REPUBLIC NATIONAL BANK
IN DALLAS,

Appellees.

Appeal From
The District Court of Dallas County,
Texas, 101st Judicial District

APPELLANT'S REPLY BRIEF

Steven E. Clark
GOINS, UNDERKOFLER, CRAWFORD &
LANGDON
1015 RepublicBank Tower
Dallas, Texas 75201
214/651-1661

Attorneys for Appellant
JACK H. BROWN & CO., INC.

However, the Court declined to file any additional findings although requested to do so by Appellant (Supp. Tr. 25-28; 31-34).

As a result of these adverse rulings, Appellant timely perfected its direct appeal from the order refusing to dissolve the writ of garnishment and its direct appeal and petition for writ of error from the order refusing to vacate the foreign judgment or grant Appellant a new trial. (Tr. 53-57; WE Tr. 41-62; 64-67; 68-71; 72-75).

By Order and Memorandum Opinion dated January 27, 1984, this Honorable Court of Appeals denied Appellee's motion to dismiss Appellant's appeals and granted Appellant's motion to consolidate such appeals.

STATEMENT OF REPLY TO COUNTER-POINTS OF ERROR

Reply to Counter-points Of Error I And II	There Is No Or Insufficient Evidence In The Record To Demonstrate That Appellant Was Properly Served In Accordance With Idaho Law And Consistent With Due Process Requirements Of The Federal And State Constitutions.

ARGUMENT AND AUTHORITIES

Reply To Counter-points Of Error I And II	There Is No Or Insufficient Evidence In The Record To Demonstrate That Appellant Was Properly Served In Accordance With Idaho Law and Consistent With Due Process Requirements Of The Federal And State Constitutions.

It is undisputed by the parties that Appellant and Signgraphics, Inc. are two separate and distinct Texas corporations (SOF 39-40). It is further undisputed that the only named...

It is a cardinal principle of constitutional law that notice must be reasonably calculated under all the circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. Mullane v. Central Hanover Bank, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950); Schroeder v. New York, 371 U.S. 208, 83 S.Ct. 279, 19 L.Ed.2d 255 (1962); Sgitcovich v. Sgitcovich, 158 Tex. 398, 241 S.W.2d 142, 146 (1951). In Mason v. Pelkes, 59 P.2d 1087, 1090 (Idaho 1936), the Idaho Supreme Court recognized that courts are not required to give full faith and credit to a judgment rendered by a court that had no jurisdiction of the subject matter or of the parties. See also Ennis v. Casey, 72 Idaho 181, 238 P.2d 435, 438-39 (1951) (default judgment against

corporation held error where it received no notice of service and made no appearance in the case).

Appellee argues that the John Doe process is allowed under Idaho law and resulted in a valid judgment against Signgraphics since that was the true name of the unknown party, no matter how the entity Signgraphics was constituted. The argument overlooks the crux of Appellant's point - that due process requires at a minimum that the John Doe entity and the actual entity be one and the same. Here, the alleged John Doe defendants were <u>different entities</u> than Appellant and therefore the reasonable notice required by due process simply did not exist.

Finally, Appellee states that service upon Appellant was made in

accordance with Idaho law, relying on Section 5-514 and...

NO. C-3491

IN THE
SUPREME COURT
OF TEXAS

NORTHWEST SIGN COMPANY.
an Idaho Corporation,

Petitioner,

VS.

JACK H. BROWN & CO.
INC.,

Respondent.

RESPONSE TO APPLICATION FOR WRIT OF ERROR

Application for Writ of Error
From The
Court of Appeals
For the Fifth Supreme Judicial District
of Texas At Dallas

NO. 05-83-00887-CV

GOINS, UNDERKOFLER, CRAWFORD
& LANGDON
STEVEN E. CLARK
1015 RepublicBank Building
Dallas, Texas 75201
214651-1661

ATTORNEY FOR RESPONDENT
JACK H. BROWN & CO., INC.

"John Doe I" for both the complaint and judgment (Supp. Tr. 21-23).

STATEMENT OF REPLY TO POINTS OF ERROR (RESTATED)

REPLY TO POINTS OF ERROR I. THROUGH VI.:	THERE IS NO OR INSUFFICIENT EVIDENCE IN THE RECORD TO DEMONSTRATE THAT RESPONDENT WAS PROPERLY SERVED IN ACCORDANCE WITH LAW AND CONSISTENT WITH THE DUE PROCESS REQUIREMENTS OF THE FEDERAL AND STATE CONSTITUTIONS.

ARGUMENT AND AUTHORITIES

REPLY TO POINTS OF ERROR I. THROUGH VI.:	THERE IS NO OR INSUFFICIENT EVIDENCE IN THE RECORD TO DEMONSTRATE THAT RESPONDENT WAS PROPERLY SERVED IN ACCORDANCE WITH LAW AND CONSISTENT WITH THE DUE PROCESS REQUIREMENTS OF THE FEDERAL AND STATE CONSTITUTIONS.

The evidence is undisputed that only one summons was ever issued and served, and such summons was served personally upon Jack H. Brown in his capacity as

registered agent for Signgraphics, Inc., at his home on Fieldcrest Court (Tr. 19-20, 26; WE Tr. 11-12, 18; SOF 42-45, 59).

The evidence is also uncontradicted that Respondent has done business under the name of Signgraphics but has never done business under the name Signgraphics, Inc. Furthermore, Signgraphics, Inc. has never done business under either the name Jack H. Brown & Company, Inc. or Signgraphics (SOF 40-44, 47). In fact, the evidence is also undisputed that Northwest knew or should have known that the entity it was dealing with was Signgraphics, a division of Jack H. Brown & Company, Inc., and not Signgraphics, Inc. (SOF 48-50, 52, 57-58; Supp. Tr. 10, 12-14).

...accord. Applington v. G.V.B. Mining Company, 55 P. 241, 242 (Idaho 1898);

Mason v. Pelkes, 59 P.2d 1087, 1090 (Idaho 1936); Vermont Loan & Trust Company v. McGregor, 51 P. 104, 105 (Idaho 1897).

Recent decisions of the Texas courts have reemphasized the principle that actual notice of the suit is insufficient if the defendant is not served in the manner required by law. Shanbaum v. Jannsen, 582 S.W.2d at 591; Heth v. Heth, 661 S.W.2d 303, 304-05 (Tex.Civ.App. - Ft. Worth, 1983, writ dism'd). Furthermore, Texas jurisprudence has consistently required that multiple defendants each be personally served with a copy of the summons containing the names of all defendants before a default judgment can be enforced. Covington v. Burleson, 28 Tex. 368, 371 (1866); Anderson v. Brown, 16 Tex. 554, 555 (1856).

Petitioner argues that it was not required to demonstrate that Respondent was properly served as a John Doe defendant. Regardless of whether Texas or Idaho law is applicable, the overriding consideration is that of constitutional due process. Due process requires that notice must be reasonably calculated under all the circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. Mullane v. Central Hanover Bank, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed.2d 865 (1950). Schroeder v. New York, 371 U.S. 208, 83 S.Ct. 279, 19 L.Ed.2d 255 (1962); Sgitcovich v. Sgitcovich, 158 Tex. 398, 241 S.W.2d 142, 146 (1951). Where a person is being served in a John Doe capacity, due process requires that such person be served in a manner to

reasonably notify him that he is being served in such a capacity. See Safeway Stores, Inc. v. Ramarez, 99 Ariz. 372, 409 P.2d 292, 298 (1965). A contrary conclusion would result in requiring any person served with process to determine at his risk the various capacities in which service is being made when there are multiple defendants and some are being sued under an assumed name pursuant to a John Doe procedure. This is particularly true where, as here, the John Doe defendants are sued in a different capacity than the entity upon whom service was allegedly made.

Petitioner's reliance upon the decisions in Continental Southern Lines, Inc. v. Hilland, 528 S.W.2d 828 (Tex. 1975) and Cohen v. C. H. Leavell, 520 S.W.2d 793 (Tex. Civ. App. - El Paso 1975, no writ) is misplaced. Continental,

although decided prior to the effective date of the amendment to Rule 28, Texas Rules of Civil Procedure, recognized the principle that the statute of limitations will be tolled where the plaintiff has sued the correct entity under an assumed name. However, the Court specifically remanded the case for a retrial to determine, inter alia, whether the separate corporate entity had received proper service of process. Cohen's holding is to the same effect, although the validity of the Cohen decision is in some doubt due to its reliance on the Court of Civil Appeals' opinion in Continental, which was reversed on appeal. Nevertheless, both of these decisions would require the plaintiff to bring in the true defendant by proper service of process before any valid judgment could be...

NO. C-3491

IN THE

SUPREME COURT

OF TEXAS

NORTHWEST SIGN COMPANY,
an Idaho Corporation,

Petitioner,

VS.

JACK H. BROWN & CO.
INC.,

Respondent.

MOTION FOR REHEARING

Application for Writ of Error
From the
Court of Appeals
For the Fifth Supreme Judicial District
of Texas At Dallas

NO. 05-83-00887-CV

GOINS, UNDERKOFLER, CRAWFORD
& LANGDON
STEVEN E. CLARK
1015 RepublicBank Building
Dallas, Texas 75201
214/651-1661

ATTORNEY FOR RESPONDENT
JACK H. BROWN & CO., INC.

Court of Appeals and reinstating the Judgment of the Honorable Trial Court, and asks this Court to grant rehearing because of the errors committed by this Court, such errors being assigned below:

POINT OF ERROR I

The Honorable Supreme Court of Texas erred by reversing the Court of Appeals holding that service on Respondent failed to provide it with the adequate and fair notice required by due process under the Federal and State Constitutions.

POINT OF ERROR II

The Honorable Supreme Court of Texas erred by failing to hold that service on Respondent was defective under Texas law.

POINT OF ERROR III

The Honorable Supreme Court of Texas erred by failing to hold that service on Respondent was defective under Idaho law.

POINT OF ERROR IV

The Honorable Supreme Court of Texas erred by holding that the

record reflects service on Respondent.

POINT OF ERROR V

The Honorable Supreme Court of Texas erred by failing to hold that the record does not reflect service on Jack Brown simultaneously as the agent for both Signgraphics, Inc. and Respondent.

POINT OF ERROR VI

The Honorable Supreme Court of Texas erred by failing to hold that the attempt of Petitioner's Idaho counsel to amend the Complaint and Judgment to substitute Respondent for John Doe I was void and ineffective under both Texas and Idaho law because the Trial Court lacked jurisdiction to reform the Judgment.

POINT OF ERROR VII

The Honorable Supreme Court of Texas erred by failing to hold that the garnishment of Respondent's account was improper as a matter of law because such action was predicated on a defective filing of foreign judgment.

POINT OF ERROR VIII

The Honorable Supreme Court of Texas erred by failing to hold

that the garnishment of Respondent's account was improper as a matter of law because Petitioner only sought to garnish an account belonging to Signgraphics, Inc.

POINT OF ERROR IX

The Honorable Supreme Court of Texas erred by failing to hold that the Idaho Judgment was void as to Respondent because of Petitioner's failure to set forth in the Complaint and establish at the default hearing the minimum contacts necessary to sustain personal jurisdiction over Respondent (and Signgraphics, Inc.).

POINT OF ERROR X

The Honorable Supreme Court of Texas erred by holding that the decision of the Honorable Court of Appeals conflicted with the provisions of Rule 28, Texas Rules of Civil Procedure.

ARGUMENT AND AUTHORITIES

Respondent respectfully submits this Honorable Court has reached an incorrect result by misapplication of applicable law as well as erroneous assumptions concerning the evidence in the record

before the Court relating to alleged service of process upon Respondent.

A detailed statement of the case is set forth in Respondent's Response to Application for Writ of Error on file in this...

entered on March 31, 1983 after garnishment of Respondent's account and over one and one-half years after the original Judgment was entered.

However, a more fundamental question of due process and jurisdiction is presented by Petitioner's attempt to insert Respondent as a named Defendant in the underlying Idaho Judgment for purposes of enforcement and collection after a Default Judgment was taken by Petitioner, who clearly sought enforcement in Texas only against the originally named Defendant in the Complaint, Signgraphics, Inc. The Supreme Court of Wisconsin addressed

this precise question in construing its statutory provision authorizing suit against a Defendant using a fictitious name, which contains language very similar to that found in Idaho Rule of Civil Procedure, Rule 10(a)(4). See Miller v. Smith, 302 N.W.2d 468 (Wis. 1981). The Supreme Court of Wisconsin construed the permissive word "may" in its statute to be mandatory, requiring the making of an amendment inserting the Defendant's true name either before or at the time of the entry of Judgment, and further held that the Default Judgment taken against the John Doe Defendant was void and unenforceable because the Court had failed to obtain personal jurisdiction over him, since there was no statutory authority existing providing for the service of the Summons upon the State Attorney General

as an agent for service of an unknown and allegedly negligent state employee.

Rule 10(a)(4), Idaho R. Civ. P., requires that when the unknown party's name is discovered the pleadings must be amended. Under the rationale of the Supreme Court of Wisconsin's opinion in Miller v. Smith, 302 N.W.2d 468 (Wis. 1981), Petitioner was clearly required to amend its Complaint to insert Respondent as a named Defendant before Default Judgment was taken and Petitioner's failure to do so has resulted in the Default Judgment being void and unenforceable with respect to Respondent. See also Zenith Radio Corporation v. Hazeltine Research, Inc., 395 U.S. 100, 110, 89 S.Ct. 1562, 1569 (1969) ("It is elementary that one is not bound by a judgment in personam resulting from litigation in which he is not designated

as a party or to which he has not been made a party by service of process").

Any presumption which may arise that jurisdiction existed over the defendant by the filing of a properly authenticated foreign judgment can be rebutted by extrinsic evidence developed in the record. See Shanbaum v. Jannsen, 582 S.W.2d 590, 591 (Tex. Civ. App. - Dallas 1979, no writ). See also, Bayne v. Heid, 638 S.W.2d 40, 41 (Tex. App. - Houston [1st Dist.] 1982, no writ); Country Clubs, Inc. v. Ward, 461 S.W.2d 651, 655-56 (Tex. Civ. App. - Dallas, 1970, writ ref'd n.r.e.). Both Texas and Idaho law are in accord that to sustain a Default Judgment there must be service in strict compliance with the law of that state. See Cates v. Pon, 663 S.W.2d 99, 101-02 (Tex. App. - Houston [14th Dist.] 1983, writ ref'd n.r.e.); Plains

Chevrolet, Inc. v. Thorne, 656 S.W.2d 631, 633 (Tex. App. - Waco 1983, no writ); Applington v. G.V.B. Mining Co., 55 P. 241, 242 (Idaho 1898); Mason v. Pelkes, 59 P.2d 1087, 1090 (Idaho 1936); Vermont Loan & Trust Co. v. McGregor, 51 P. 104, 105 (Idaho 1897).

Respondent does not quarrel with this Court's interpretation of Rule 28, Texas Rules of Civil Procedure, as permitting a Defendant to be sued in Texas under its assumed name. However, Rule 28 simply has no application to the issue before this Court, which is whether a Default Judgment is binding on an entity sued under an assumed name pursuant to a John Doe designation where that designation misidentifies the nature of the entity itself (unknown proprietors or partnerships, not an unknown corporation), and no notice is provided to the agent served

on behalf of such entity by either the Summons or the officer serving the agent that he is being served as the agent for a fictitiously named defendant, especially when it is unclear from the present record whether or not Petitioner, at the time of service, was attempting to serve any other party besides the named Defendant Signgraphics, Inc.

Thus the critical issue is one of constitutional due process which requires that notice must be reasonably calculated under all the circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. See Mullane v. Central Hanover Bank, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed.2d 865 (1950).

Assuming arguendo that Petitioner in fact attempted to serve the John Doe Defendants doing business under the

assumed name Signgraphics as well as the named Defendant Signgraphics, Inc., there is nothing in the record to demonstrate that fundamental due process was provided to Respondent and its agent for service at the time such agent was served with the Summons at his home on Fieldcrest Court. Mr. Brown was neither informed by the Constable that he was being served as the agent of a fictitious defendant nor could he determine from a review of either the Summons or Complaint that service was being effected upon him in such a capacity.

As the Arizona Supreme Court held under facts very similar to the instant case, where a person is served in a John Doe capacity, due process requires that the person served be served in a manner to reasonably notify him that he is being served in such a capacity and failing

that such a Default Judgment against that person is void. See Safeway Stores, Inc. v. Ramarez, 99 Ariz. 372, 409 P. 2d 292, 298 (1965). See also Wood v. Worachek, 437 F.Supp. 107 (E.D. Wis. 1977); §474 of the California Code of Civil Procedure, quoted in Hogan, California's Unique John Doe Defendant Practice: A Fiction Stranger than Truth, 30 Stan. L. Rev. 51, 57 n. 17 (1977). Cf. Legg v. Barinaga, 92 Idaho 225, 440 P.2d 345, 347 (1968) (holding service on partner insufficient to bind partnership or other partner when there was no indication he was being served in such capacity at time of service of summons).

A contrary conclusion would result in requiring any person served with process to determine at his risk the various capacities in which service is being made when there are multiple defendants and

some are being sued under their assumed name pursuant to John Doe Procedure. This is particularly true where, as here, the John Doe Defendants are sued in a different capacity than the entity upon whom service was allegedly made. Due process should require, at a minimum, that the John Doe entity sued and the actual entity served be one and the same.

If the failure of the parties to properly request judicial notice of Idaho law renders Texas law applicable with respect to the adequacy of service, then service in this case was defective on its face because Texas law requires that a separate citation be served with respect to each defendant. See Anderson v. Brown, 16 Tex. 554, 555 (Tex. 1856); Covington v. Burleson, 28 Tex. 368, 370-71 (1866); American Spiritualist Ass'n v. Ravkind, 313 S.W.2d 121, 124

(Tex. Civ. App. - Dallas 1958, writ ref'd n.r.e.). The record reflects that only a single citation was served upon Mr. Brown as registered agent for Signgraphics, Inc., the named Defendant and no separate citation was issued and served upon him for the John Doe Defendant, doing business under the assumed name Signgraphics. Nor is Respondent aware of any Idaho procedure which would authorize entry of judgment against multiple defendants based on a single citation such as is at issue here.

If Idaho law governs the manner of service, service would be improper under the present record because it was not made in the manner required by statute, i.e., by serving the President or Secretary and by forwarding a copy to the business address of the foreign

corporation. See Rule 4(d)(4)(B), Idaho Rules of Civil...

NO. C-3491
IN THE
SUPREME COURT
OF TEXAS

NORTHWEST SIGN COMPANY.
an Idaho Corporation,

Petitioner,

VS.

JACK H. BROWN & CO.
INC.,

Respondent.

RESPONDENT'S MOTION FOR STAY OF MANDATE

Application for Writ of Error
From the
Court of Appeals
For the Fifth Supreme Judicial District
of Texas At Dallas

NO. 05-83-00887-CV

GOINS, UNDERKOFLER, CRAWFORD
& LANGDON
STEVEN E. CLARK
3300 Thanksgiving Tower
1601 Elm Street
Dallas, Texas 75201
214/969-5454

ATTORNEYS FOR RESPONDENT,
JACK H. BROWN & CO., INC.

NO. C-3491
IN THE
SUPREME COURT
OF TEXAS

NORTHWEST SIGN COMPANY.
an Idaho Corporation,
Petitioner,

VS.

JACK H. BROWN & CO.
INC.,
Respondent.

RESPONDENT'S MOTION FOR STAY OF MANDATE

TO THE HONORABLE SUPREME COURT OF TEXAS:

COMES NOW Jack H. Brown & Co., Inc. d/b/a Signgraphics, Respondent in the above-numbered and entitled cause, and pursuant to Rule 507 of the Texas Rules of Civil Procedure, files this Motion For Stay of Mandate requesting that the mandate of this Court be stayed pending disposition by the Supreme Court of the United States of Respondent's Petition for Writ of Certiorari.

Respondent respectfully submits that the grounds for its motion are substantial in that Respondent has preserved and presented to this Court fundamental questions of federal constitutional due process concerning the validity of the foreign judgment which this Court has held to be enforceable under its per curiam opinion and judgment dated November 21, 1984. Refusal of this Court to stay the mandate would result in serious hardship to Respondent because it would not allow Respondent to present to the Supreme Court of the United States substantial issues of federal due process raised by Respondent throughout these proceedings. Petitioner Northwest Sign Company ("Northwest") will not be prejudiced by a stay of this Court's mandate pending disposition of Respondent's Petition for Writ of Certiorari to the

Supreme Court of the United States because Respondent has posted adequate supersedeas and cost bonds to satisfy the judgment in question, in the event that it is not reversed by the Supreme Court of the United States.

The factual background concerning this suit and issues raised by Respondent on appeal are adequately set forth in Respondent's Response to Application for Writ of Error and Motion for Rehearing and need not be repeated here.

The issues of law which Respondent intends to present in its Petition for Writ of Certiorari to the Supreme Court of the United States are as follows:

1. Whether this Court erred by failing to hold that service on Respondent failed to provide it with the adequate and fair notice required by federal due process;

2. Whether this Court erred by failing to hold that there was insufficient minimum contacts by Respondent to obtain jurisdiction over its person;

3. Whether this Court erred by holding that the foreign judgment was entitled to full faith and credit;

4. Whether this Court erred by holding that the record reflected adequate service on Respondent;

5. Whether this Court erred by holding that the amendment of the Idaho complaint and judgment nearly a year and a half after it was originally entered was effective to sustain a judgment against Respondent;

6. Whether this Court erred by holding that the garnishment of Respondent's account was proper when such garnishment was based on a

defective filing of foreign judgment and therefore was not entitled to full faith and credit;

7. Whether this Court erred by holding that garnishment of Respondent's account was proper when Petitioner only sought to garnish the account of Signgraphics, Inc., a separate and distinct corporation;

8. Whether this Court erred by holding that the Court of Appeals decision conflicted with a Texas rule of procedure that had no application to Petitioner's suit against a fictitious entity that was being sued under an assumed name pursuant to Idaho law;

9. Whether this Court's decision conflicts with the decisions of other state's courts of last resort and federal courts concerning the

requirements of due process in perfecting service on a John Doe entity pursuant to state law; and

10. Whether this Court's construction of Rule 28, Texas Rules of Civil Procedure, is in conflict with federal principles of due process under the Federal Constitution.

Respondent submits that it should be given an opportunity to present these issues to the United States Supreme Court prior to Northwest's execution on its foreign judgment. In support, Respondent would show that Northwest will not be prejudiced by a stay of this Court's mandate because Respondent filed cost and supersedeas bonds on appeal to preserve Northwest's status as a judgment creditor; these bonds are still in effect and will insure that Northwest's legal position will not be diminished by a stay of

this Court's mandate pending disposition of Respondent's Petition for a Writ of Certiorari to the Supreme Court of the United States.

On the other hand, substantial harm will result to Respondent if this Court's mandate is not stayed. Respondent respectfully submits that its rights to due process protected and guaranteed by the federal constitution will be denied if Northwest is allowed to execute on its foreign default judgment against Respondent. Respondent must file its petition for writ of certiorari in the United States Supreme Court within ninety days after this Court's overruling of Respondent's Motion For Rehearing (December 19, 1984). Unless this Court stays its mandate, Northwest will be allowed to execute on its judgment at the same time, or even prior to the time, that

Respondent seeks to have the United States Supreme Court declare that such execution would be...

Curt R. Thomsen, Esq.
Holland, Kidwell,
Hahn & Crapo
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---
(208) 523-0620

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

NORTHWEST SIGN COMPANY, an Idaho Corporation,	)	Case No.: H-2092
Plaintiff,	)	COMPLAINT
vs.	)	Fee Category: A.1.
SIGNGRAPHICS, a foreign; corporation JOHN DOES I THROUGH X d/b/a SIGNGRAPHICS, a proprietorship, or partnership,	)	
Defendants.	)	

COMES NOW, the above-named Plaintiff, and for cause of action against the above-named defendants, alleges as follows:

I.

That at all times herein mentioned Northwest Sign Company was and now is a corporation recognized and existing under and by virtue of the laws of Idaho, and was and now is licensed to and doing business in the State of Idaho.

II.

John Does I through X are unknown partners or unknown proprietors doing the business under the name of Signgraphics. The John Doe defendants are made defendants herein by fictitious names. Plaintiff's request leave of court to amend this complaint to insert their proper names at the time they are ascertained.

III.

Defendant Signgraphics, Inc. is a foreign corporation with its principal place of business in Dallas, Texas.

IV.

Defendants are subject to jurisdiction of this State pursuant to Idaho Code §5-514, having contacts with the State of Idaho which are the subjects of this Complaint.

V.

That on or about the 23rd day of May, 1980 and the 10th day of November, 1980 defendants opened an account with plaintiff for the purchase of services and materials. That Defendants have received materials and services from Plaintiff. That there is presently due and owing on the accounts the sum of One Thousand Three Hundred and 47/100 DOLLARS ($1,300.47) which sum includes principal and interest due on the account through July 1, 1980.

VI.

That under the terms of the account between plaintiff and defendants, defendants are obligated to pay a finance charge of 1½% per month on the outstanding previous balance on the account. That such finance charge is now accruing, and plaintiff prays leave of this court to amend this complaint at trial or at the time judgment is requested to show additional finance charge which has accrued.

VII.

Under the terms of the account between plaintiff and defendants, plaintiff is entitled to recover a reasonable attorney's fee and collection costs as part of this action. Plaintiff is further entitled to reasonable attorney's fee and collection cost pursuant to Idaho Code §12-120 and §12-121. That the sum

of $600.00 is a reasonable sum to be allowed to plaintiff for its attorneys fees herein if the matter is concluded by Default, and a greater sum should be allowed if this matter is contested.

WHEREFORE, plaintiff pays the judgment, order and decree of this court against the defendants jointly and severally as follows:

1. For the sum of $1,300.47 as and for the amounts due and owing.

2. For additional accrued finance charges which charges plaintiff seeks leave of court to prove at trial or at the time judgment is requested.

3. For the sum of $600.00 as and for plaintiff's attorney's fees if this matter is concluded by default and a greater sum if this matter is contested.

4. For costs of suit incurred herein.

5. For such other and further relief as the Court deem just and equitable.

DATED this 31st day of July, 1981.

HOLDEN, KIDWELL, HAHN & CRAPO

/s/ Curt R. Thomsen
Curt R. Thomsen
A member of the firm
Attorneys for Plaintiff

Curt R. Thomsen, Esq.
Plaintiff or attorney...for Plaintiff

Residence and P. O. Address
P. O. Box 129/Idaho Falls, ID 83401

Phone No. 523-0620

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

NORTHWEST SIGN COMPANY, an Idaho corporation,	)	
Plaintiff,	)	
VS	)	SUMMONS
	)	NO. A-2092
SIGNGRAPHICS, a foreign corporation; JOHN DOES I THROUGH X d/b/a SIGN-GRAPHICS, a proprietor-ship or partnership,	)	
Defendants.	)	

THE STATE OF IDAHO SENDS GREETINGS TO THE ABOVE NAMED DEFENDANTS

You are hereby notified that a complaint has been filed against you in the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Bonneville, by the above named plaintiff, ..., and you are directed to file a written answer or

written motion in defense to the said complaint within twenty days of the service of this summons; and you are further notified that unless you do so within the time herein specified, the plaintiff will take judgment against you as prayed in said complaint.

The nature of the claim against you is recovery of amounts due.

WITNESS my hand and seal of said District Court, this 3rd day of August, 1981.

/s/ Randall Lynne
Clerk

/s/
Deputy

CONSTABLE'S RETURN

Came to hand on the 6th day of August A.D., 1981, at 10:26 o'clock A.M. Executed in Dallas County, Texas, by delivering to the within named Defendants at the following times and dates, to wit: Signgraphics delivering to its' registered agent for service Jack H. Brown, on the 10th day of October, 1981, at 11:38 A.M. each, in person a true copy of this Citation together with the accompanying copy of the petition, having first indorsed on same the day of delivery.

For Serving Citation -- $10.00

FORREST KEENE, CONSTABLE,
PRECINCT #1
DALLAS COUNTY, TEXAS

By: /s/
Deputy Constable

NO. 82-3928-E

NORTHWEST SIGN COMPANY	§	IN THE DISTRICT
	§	
	§	COURT OF DALLAS
VS.	§	COUNTY, TEXAS
	§	101ST JUDICIAL
SIGNGRAPHICS, INC.	§	DISTRICT

STATEMENT OF FACTS
HEARING ON MOTION TO VACATE
VOLUME 1 OF 1 VOLUME

APPEARANCES:

MR. BERTRAN T. BADER, III
211 North Ervay Street
Dallas, Texas

Attorney for Plaintiff;

MR. STEVEN E. CLARK
4245 Interfirst Two
Dallas, Texas
Attorney for Defendant.

Came on to be heard Defendant's Motion to Vacate in the above-styled and numbered cause before the Honorable CRAIG T. ENOCH, Judge of the 101st District Court of Dallas County, Texas, on the 6th

day of May, 1983, and the following proceedings were had:

Q Would you tell the Court how you first became aware of any kind of legal proceeding involving Northwest Sign Company -- concerning you?

A Ah -- I was served at my home --

Q Who were you served by?

A I guess the sheriff or constable's department or something, county representative.

Q All right. And describe, if you can, as best you recall, the manner in which the service was made.

A It was served on me as the registered agent for Signgraphics, Inc.

MR. CLARK: Would you mark this as Defendant's 1?

(Defendant's Exhibit No. 1 was marked for identification)

Q Mr. Brown, I'm going to hand you what the court reporter has marked as Defendant's Exhibit No. 1, and I will ask you first, sir, whether you recognize those documents?

A Yes.

Q Would you identify those documents comprising Defendant's Exhibit 1 for the record, please?

A I believe this to be the instrument that I was served at my home.

Q And, again, for the purposes of the record, would you identify exactly what is contained in Defendant's Exhibit 1 - what the instrument purports to be.

A It is a summons -- in the District Court of the 7th Judicial District of the State of Idaho in and for the County of Bonneville, Northwest Sign Company, an Idaho corporation versus Signgraphics, Inc., a foreign

corporation, John Does, one through ten, d/b/a Signgraphics, a proprietorship or partnership, defendants.

Q Is there anything else besides a summons that is part of Defendant's Exhibit No. 1?

A A complaint -- Case No. -- complaint for -- fee category, A-1, with Northwest Sign Company, an Idaho corporation, the Plaintiff, -- versus Signgraphics, a foreign corporation, John Does, one through ten, d/b/a Signgraphics, a proprietorship or partnership, Defendants.

Q Again, let me ask, is Defendant's Exhibit 1 a true and correct copy of the papers with which you were served?

A I would have to refer back to my file -- I assume it is, but as far as I know it is.

Q And again how were you served with those papers by the sheriff?

A At my home on a Saturday morning.

Q And in what capacity?

A As the agent for Signgraphics, Inc. -- registered agent.

Q Now, those papers were personally delivered to you and not mailed, is that correct?

A Correct.

Q Did you ever receive as a registered agent for either Signgraphics, Inc. or for Jack H. Brown & Company, any copy of a summons and complaint involving the Plaintiff, Northwest Sign, in the mail?

A No.

Q Did you ever receive a copy of any summons and complaint involved in this lawsuit by Northwest Sign other than

Defendant's Exhibit 1, and in the manner in which you have testified to?

A No. Other than this revised one that I got a month or so ago.

Q And you are referring to the amended judgment and complaint?

A Yes.

Q Which you personally received at your office?

A Right.

THE COURT: Mr. Brown, are you the registered agent for Jack H. Brown, Incorporated?

THE WITNESS: Yes.

Q To your knowledge, and understanding were you ever aware that you were being sued in Idaho under the name of Jack H. Brown & Company, Inc., d/b/a Signgraphics, Inc.?

A No.

Curt R. Thomsen, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO
P. O. Box 129
Idaho Falls, ID 83402
Telephone: (208) 523-0620

IN THE DISTRICT COURT FOR THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

NORTHWEST SIGN COMPANY, an Idaho corporation,	§	
Plaintiff,	§	Case No. A-2092
V.	§	JUDGMENT
SIGNGRAPHICS, a foreign corporation; JOHN DOES I through X d/b/a SIGN-GRAPHICS, a pro-prietorship or partnership,	§	
Defendants.	§	

IN THIS ACTION, the defendant, SIGNGRAPHICS, having been duly served and having failed to appear, plead or otherwise defend, and the time for such having expired, and Default of said defendants having been duly entered according to

law, and it further appearing that the defendants are not in the military service of the United States, and it further appearing that the plaintiff is entitled to a Judgment against the defendants, as prayed for in the Complaint on file herein;

NOW, JUDGMENT IS HEREBY ENTERED, for plaintiff and against defendant, SIGN-GRAPHICS, jointly and severally, in the total sum of $1,951.47, lawful money of the United States, which is comprised of $1,300.47 for amounts due and owing, $600.00 for plaintiff's attorney's fees incurred herein, and $51.00 for Court costs incurred herein; with interest on the total Judgment at the highest legal rate of interest (18%) per annum from the date hereof until paid.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the plaintiff have

execution against the property of defendants for the payment of this Judgment.

JUDGMENT RENDERED AND ENTERED this 19th day of November, 1981.

/s/ William W. Black
Judge

STATE OF IDAHO)
)
COUNTY OF BONNEVILLE)

I HEREBY CERTIFY that the above and foregoing document is a true and correct copy of the original _____.

DATED March 2, 1982.

/s/_____

NOTICE OF FILING OF FOREIGN JUDGMENT

TO: SIGNGRAPHICS, INC.
(Judgment Debtor)

10011 MILLER RD.
P. O. BOX 38668
DALLAS, TX. 75238

NOTICE IS HEREBY GIVEN OF FILING OF FOREIGN JUDGMENT IN THIS OFFICE ON APRIL 14, 1982. IN THE FOLLOWING CASE:

Our Case No. 82-3928 E (Original Case No. A-2092 State of IDAHO) Styled NORTHWEST SIGN CO. Vs. SIGNGRAPHICS, INC.

Name & Address of
Judgment Creditor:

NORTHWEST SIGN CO., INC.
2640 SHOSHONE
IDAHO FALLS, IDAHO

Name & Address of Attorney in this state for Judgment Creditor:

BERTRAN T. BADER, III
211 NORTH ERVAY BLDG. #1004
DALLAS, TEXAS 75201

T. E. MOORE, DISTRICT CLERK
DALLAS COUNTY, TEXAS

By:/s/ _____
Deputy

NO. 83-1043

NORTHWEST SIGN CO.	§	IN THE DISTRICT
	§	COURT
VS.	§	DALLAS COUNTY,
	§	TEXAS
REPUBLIC NATIONAL	§	101ST JUDICIAL
BANK OF DALLAS	§	DISTRICT

APPLICATION FOR WRIT OF GARNISHMENT

I.

NOW COMES Northwest Sign Co., hereinafter Plaintiff, and makes this application for the issuance of a Writ of Garnishment against Republic National Bank of Dallas, hereinafter Garnishee and the below signed counsel being fully cognizant of the matters stated herein and being duly sworn says as follows:

That heretofore in that certain Cause No. 82-3928-E styled Northwest Sign Co. v. Signgraphics, Inc. the Plaintiff, Northwest Sign Co., filed pursuant to the Uniform Enforcement of Foreign Judgments Act art. 2328b Judgment in that certain Cause No. A-2092 in the District Court

for the 7th Judicial District of The State of Idaho in and for the County of Bonneville styled Northwest Sign company, an Idaho corporation v. Signgraphics, a foreign corporation, et al where Plaintiff did obtain a judgment of and from Signgraphics, Inc., hereinafter referred to as Defendant in the sum of $1,951.47 plus interest at the rate of 18% from the 19th day of November, 1981. Pursuant to art. 2328b such judgment when filed has the same effect as a judgment originally eminating from the Honorable 101st District Court of Dallas County, Texas.

II.

Plaintiff herein says that the judgment as above set out is due, owing and unpaid in whole or in part and that Signgraphics, Inc., Defendant, has not within the knowledge of affiant property in Defendant's possession within this

state subject to execution sufficient to satisfy the above referenced judgment. Plaintiff would show that it has heretofore had a Writ of Execution issued on such judgment and that such Writ of Execution was returned by the Sheriff of Dallas County, Texas, nulla bona.

III.

This garnishment applied for is not sued out to injure the Defendant or the garnishee. The affiant has reason to believe and does believe that Republic National Bank of Dallas, whose address and place of business is Pacific and Ervay Streets, in Dallas, Dallas County, Texas, is indebted to the Defendant, Signgraphics, Inc., or has in its hands effects belonging to the said Defendant. Such indebtedness would include the deposit in Account No. 2670313 with garnishee bank.

IV.

This Writ of Garnishment may be served on garnishee by serving one of its officers at the principal place of business of garnishee at Pacific and Ervay Streets in Dallas, Dallas County, Texas.

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that this Honorable Court issue its most gracious Writ of Garnishment commanding Garnishee to appear and answer as required by the Texas Rules of Civil Procedure 665.

Respectfully submitted,

COX & BADER

By: /s/ Bertran T. Bader
BERTRAN T. BADER III
Bar #01498100
211 N. Ervay,
Suite 1004
Dallas, Texas 75201
(214) 748-5361

ATTORNEYS FOR PLAINTIFF

Curt R. Thomsen, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO
P. O. Box 129
Idaho Falls, Idaho 83402
Telephone: (208) 523-0620

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

NORTHWEST SIGN COMPANY, an Idaho corporation, Plaintiff, VS. SIGNGRAPHICS, a foreign corporation; JOHN DOES I through X, d/b/a SIGN-GRAPHICS, a proprietorship or partnership, Defendants.	Case No. A-2092 ORDER

The Court has received the Motion of the Plaintiff Northwest Sign Company to amend the Complaint and Judgment in this matter to designate the true name of Defendant John Doe I to be John H. Brown & Co., d/b/a Signgraphics. The Court has

reviewed the Affidavit of Marsha James submitted in conjunction with the Motion, and finding good cause to allow the amendment:

NOW, therefore, it is hereby ordered, adjudged and decreed that Plaintiff's Complaint in the above-entitled proceeding is hereby deemed amended to add John H. Brown & Co., d/b/a Signgraphics, a Texas corporation, as defendant in place of John Doe I.

It is further ordered that the adjudgment entered herein by default is further amended to specify that judgment shall be taken against Defendant John H. Brown & Co., d/b/a Signgraphics.

DATED this 31st day of March, 1983.

/s/ William A. Black
Judge